

The AquAeTer, Inc. model correctly used the low flow and mixing zone descriptions in ACPC&EC Regulation 2. Because the low flow used in the model would not be appropriate, the Corps of Engineers stage discharge curve for Felsenthal Lock and Dam could be used to quantify the flow and mixing zone volume.

In order to provide a timely response to EPA, the Department would like to receive this information within the next three weeks. If additional time is needed please request in writing with adequate justification.

If you have any questions regarding this request please do not hesitate to contact me at (501) 682-0929.

Sincerely,

Robert E. Blanz, PhD, P.E.
Acting Sr. Operations Manager
Office of Water Quality

cc: Caleb Osborne, Associate Director, Office of Water Quality
Stacey B. Dwyer, P.E., Associate Director, NPDES Permits and TMDL Branch, EPA,
Region 6

TROUTMAN SANDERS

July 11, 2017

Lisa Lavie Jordan, Director
Corinne Van Dalen, Supervising Attorney
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118

Re: Georgia-Pacific Crossett, AR

Dear Counsel:

I am writing to you on behalf of my client, Georgia-Pacific Crossett LLC, to raise a very serious issue that requires correction. For almost a decade, the Tulane Environmental Law Clinic and its clients, including the Louisiana Environmental Action Network and the Ouachita Riverkeeper (collectively, TELC) have persistently and publicly presented to state and federal agencies misinformation related to Georgia-Pacific's mill in Crossett, Arkansas. This misinformation has been employed as part of a campaign that can at best be characterized as an effort to interfere with Georgia-Pacific's lawful and permitted operations at the Crossett mill. This campaign has been advanced through lawsuits, threatened lawsuits and other administrative actions against the U.S. Environmental Protection Agency (EPA), the Arkansas Department of Environmental Quality (ADEQ) and Georgia-Pacific, including, without limitation:

1. Letter to ADEQ dated June 2009, opposing the approved use variations for Coffee Creek and Mossy Lake.
2. Comments to ADEQ dated February 2010, opposing draft National Pollutant Discharge Elimination System (NPDES) Permit No. AR0001210.
3. Comments to ADEQ dated July 2010, opposing the approved use variations for Coffee Creek and Mossy Lake.
4. Letter to EPA dated March 2011, asking EPA to overfile, revoke and reissue NPDES Permit No. AR0001210.
5. Letter to EPA dated December 2013, asking EPA to object to ADEQ's triennial review of water quality standards, with a specific focus on the approved use variations for Coffee Creek and Mossy Lake.

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6. Lawsuit against EPA, filed December 2014, alleging that EPA committed legal error in not objecting to ADEQ's reissuance of NPDES Permit No. AR0001210.
7. Petition to EPA dated September 2015, seeking to force EPA to remove the approved use variations for Coffee Creek and Mossy Lake.
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11. Petition to EPA, dated May 2017, to object to draft NPDES Permit No. AR0001210. We note that this is the latest in a failed string of at least five attempts – all on essentially the same grounds – to force EPA to take over the permit for the Crossett mill, notwithstanding the fact that EPA has consistently and repeatedly declined to do so (decisions that are squarely within EPA's discretion and technical expertise).

In each case, TELC's actions have been predicated on a fundamentally misleading and inaccurate set of facts about the mill's wastewater treatment system and receiving waterbodies. TELC has never meaningfully sought to engage Georgia-Pacific to get an accurate set of facts. To the contrary, TELC has systematically excluded Georgia-Pacific (and often ADEQ, as well) from its correspondence and meetings with EPA. Georgia-Pacific has made repeated good faith attempts to correct TELC's misunderstandings. Nonetheless, TELC has ignored Georgia-Pacific's efforts to set the record straight and continues to perpetuate – and indeed promote – misinformation about Georgia-Pacific's operations. Those operations and related environmental conditions are properly characterized, in relevant part, as follows:

- a. TELC has repeatedly asserted that Georgia-Pacific discharges untreated effluent into Coffee Creek at the mill site. This is fundamentally incorrect. When the facility began manufacturing lumber in 1899 and later pulp and paper in 1937, the discharge from these operations flowed into the Coffee Creek drainage as it left the mill site. However, due to changes in the drainage basin over time, including the collection of storm water via constructed channels in the area, the drainage known as Coffee Creek does not exist on the mill site today, and for decades, the mill's untreated effluent has been separate from Coffee Creek.

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- b. Process wastewater from the mill is routed through two underground enclosed pipelines to the primary clarifier, which is the start of the wastewater treatment system. Throughout this 1 mile length of pipe, there is no “open sewer” that could expose residents to untreated wastewater. The nearest residence to the clarifier is 0.45 miles away, and the West Crossett community is approximately 0.7 miles away. TELC repeatedly mischaracterizes and misrepresents the underground enclosed pipelines (as well as other, unrelated non-industrial stormwater conveyances) as “a toxic flume” and “an open sewer ... within one hundred feet of some West Crossett residences.”
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- d. TELC alleges that portions of the wastewater treatment system occupy waters of the U.S. and, as a result, discharges into the system must be permitted. This position is contrary to both the facts set forth above and the law. TELC fundamentally misreads the “waste treatment system” exclusion under the Clean Water Act. TELC claims that the exclusion does not apply to treatment ponds constructed in waters of the U.S., but TELC ignores the fact that this “exclusion from the exclusion” was suspended by EPA and has never been reinstated. *See* 45 Fed. Reg. 48,620 (July 21, 1980). TELC also ignores the fact that the reported case law applies the exclusion not just to treatment ponds but also to the conveyances leading into those ponds. *See, e.g., Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F. 3d 177 (4th Cir. 2009). In short, to the extent the wastewater treatment system was constructed in the historic Coffee Creek drainage, the entire system, from the mill site to the upper reaches of Mossy Lake, is excluded.
- e. TELC’s allegation that Georgia-Pacific’s discharge eliminates the West Crossett community’s “use of Coffee Creek as a natural resource” is inaccurate on two fronts: (1) Georgia-Pacific’s untreated wastewater is not discharged into Coffee Creek; and (2) the vast majority of Coffee Creek is on private property with no access to the public.
- f. Under the legally “applicable” water quality standards for Arkansas (*see* 40 CFR § 131.21), use variations are in place for Coffee Creek and Mossy Lake. NPDES Permit No. AR0001210 ensures compliance with the applicable standards, and

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Georgia-Pacific is in compliance with this permit. ADEQ and EPA have indicated that they plan to review the use variations as part of the next triennial review of water quality standards beginning in 2017. As part of that review, the agencies will need to consider the use attainability analyses conducted for Coffee Creek and Mossy Lake, the most recent of which was completed in November 2013. Mossy Lake, and the segment of Coffee Creek downstream from Mossy Lake, are subject to seasonal flooding and are inundated by the Ouachita River approximately 43% of the year. Any existing uses in these waters – which are co-extensive with Georgia-Pacific's operations in Crossett since 1937 – are necessarily influenced by these seasonal conditions.

- g. The Arkansas Department of Health (ADH) and the Agency for Toxic Substance and Disease Registry (ATSDR) recently completed and released a joint health consultation for Crossett.¹ This health consultation was based on years of statistical health data maintained by ADH for Ashley County and the State of Arkansas. This study concluded “there is no significant difference to indicate elevated cancer cases for Ashley County as compared with the state of Arkansas.” Also, working cooperatively with the EPA, ADEQ and ADH, Georgia-Pacific has voluntarily been operating a continuous H₂S ambient air monitor since October 2014. This monitoring confirms that emissions from the wastewater treatment system are not creating unsafe or harmful conditions. In fact, between November 1, 2014 and July 1, 2017, there were approximately 64 hours where the H₂S monitor recorded levels above the suggested intermediate exposure MRL of 70 ppb, when measured over a 30 minute rolling average. This represents 0.27% of the 23,352 total hours monitored. Georgia-Pacific notes that all the data it has collected to date has been below the applicable MRLs when the appropriate averaging periods established by ATSDR are applied.

Georgia-Pacific has repeatedly attempted to correct TELC about its misstatements and directed TELC to the relevant law. We will have no choice but to assume that if you continue to perpetuate and promote misinformation, your purpose is to harm and interfere with Georgia-Pacific's lawful and permitted operations. If TELC persists in its tactics, we will be forced to take this matter to appropriate authorities for relief.

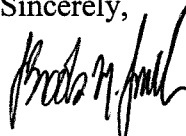
¹ June 6, 2016: Review of Community Drinking Water and Health Outcome Data in Response to Community Requests of Residents Near the Georgia-Pacific Corporation Crossett Paper Operations 100 Mill Supply Road Crossett, Ashley County, Arkansas 71635; EPA Identification Number: ARD035466648 AFIN Number: 02-00013; Prepared By: Arkansas Department of Health Under a Cooperative Agreement with the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry Atlanta, Georgia 30333; http://www.atsdr.cdc.gov/HAC/pha/GeorgiaPacificCorporation/Georgia_Pacific_Corporation_Crossett_AR_HC_06-06-2016_508.pdf

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Please understand that we take this matter very seriously. Georgia-Pacific has an unwavering commitment to compliance and protection of human health and the environment and has been and remains willing to engage with any stakeholder that has concerns or questions about its operations. We will not, however, stand by and allow any party to falsely portray Georgia-Pacific's operations to government officials. If you have any questions or would like to discuss anything further, please call me.

Sincerely,



Brooks M. Smith
Counsel to Georgia-Pacific

BMS:hmn

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TULANE LAW SCHOOL

TULANE ENVIRONMENTAL LAW CLINIC

December 8, 2017

By Email to: brooks.smith@troutman.com and U.S. Mail

Mr. Brooks M. Smith
Troutman Sanders LLP
1001 Haxall Point
Richmond, VA 23219

Re: Response to July 11, 2017, Letter on the Georgia-Pacific paper mill in Crossett

Dear Mr. Smith:

We received your July 11, 2017, letter regarding the Tulane Environmental Law Clinic's (TELC's) work on behalf of the Louisiana Environmental Action Network (LEAN) and the Ouachita Riverkeeper ("Riverkeeper") regarding the Georgia-Pacific (G-P) facility in Crossett, Arkansas. Exhibit A. This letter responds to the points you raise.

First, your letter contains basic errors which require correction. As an initial matter, TELC represents clients, as you recognize in your letter; we have no "campaign" or agenda of our own. As counsel yourself, you should know that our role as counsel is to act on our clients' behalf. The TELC documents you listed on pages 1-2 which you attribute to the "campaign" were submitted to administrative agencies from whom the public may seek redress.¹ Contrary to your representation, none of the administrative actions you list were "against" G-P, nor was the lawsuit.²

Additionally, your letter states that "Georgia-Pacific has made repeated good faith attempts to correct TELC's misunderstandings" and that "Georgia-Pacific has repeatedly attempted to correct TELC about its misstatements and directed TELC to the relevant law." We are unaware of any communication from G-P or its counsel to TELC prior to your July 11, 2017, letter. Please send complete copies of all such correspondence for our review and for our files.

As to the majority of your letter and its allegations that TELC presented misinformation, we take seriously any accusation of false claims. TELC's obligation is to advance its clients' lawful interests by making good-faith submissions of law and fact. However, your letter fails to support your accusations, and the accuracy of our submissions was supported by all of the

¹ Additionally, TELC did not author the March 2011 letter to EPA which you reference on page 1 of your letter.

² The lawsuit named EPA as the sole defendant; G-P chose to intervene in the suit.

Tulane Environmental Law Clinic

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information we possessed at the time. But we are always eager to learn and would be happy to explore G-P's assertions (*i.e. paragraphs a. – g. at pages 2 – 4 of your letter*).

First, at *paragraph a.*, after confirming our understanding that “discharge from [the original facility at the G-P site] flowed into the Coffee Creek drainage as it left the mill site,” you assert that “due to changes in the drainage basin over time, including the collection of storm water via constructed channels in the area, the drainage known as Coffee Creek does not exist on the mill site today.” Please explain what you mean by “the drainage known as Coffee Creek” as opposed to the stream designated as “Coffee Creek” on existing maps. Please also provide us with documents or other evidence that you have that shows “changes in the drainage basin over time” and copies of any permits or other authorization for any work done to make those changes. In addition, please tell us: On what date did Coffee Creek cease to “exist on the mill site”? And what specifically caused it to cease to exist? Please fully document these responses.

Direct physical access would help to clarify our understanding on this and similar points that you raise. Would your client please give a tour to LEAN and the Riverkeeper and their expert and allow them to examine the site? We would like them to take photographs and a GPS tool on that tour.

Second, at *paragraph c.*, you assert that the G-P “mill’s NPDES permitted discharge point ... flows into the upper reaches of Mossy Lake.” You also assert that “the mill’s permitted wastewater treatment system and associated channels are wholly separate and distinct from Coffee Creek, which is an ephemeral stream prior to its confluence with Mossy Lake.” These assertions are inconsistent with information that we have in our records, including historical records (which you confirm at your *paragraph a.*) and USGS maps, which show that Coffee Creek is the receiving stream for G-P’s wastewater discharges. For example, USGS maps indicate that the NPDES external discharge Outfall 001, which G-P’s permit states is located “following the final treatment unit (aeration basin),” is a segment of Coffee Creek.

I understand that G-P has recently mounted an effort to remove the name Coffee Creek from that stream on the official USGS maps, but have not heard of any final change or decision. Also, G-P’s effort to remove the name Coffee Creek from the stream currently indicated as Coffee Creek would not change the status of that receiving water from being a Water of the United States. If there is additional information that could explain your apparently incorrect assertion that TELC has misrepresented the current status of Coffee Creek as the receiving stream for G-P’s permitted wastewater, please provide it.

Third, with respect to your legal allegations at *paragraph d.*, you challenge the statement that the Clean Water Act requires G-P to apply for and receive permits for discharges into its wastewater treatment system which occupy waters of the United States. You cite the *Ohio Valley* case. That case is about “impoundments created by the discharge of fill material ... if **permitted by the Corps** under Section 404 for purposes of creating a waste treatment system.” *Id.* at 214 (emphasis added and internal quotes omitted). As it is our understanding that G-P has no Section 404 Corps permit, the *Ohio Valley* case has no application to the G-P facility.

Fourth, at *paragraph f.*, it is unclear to me the point of the information that you provide. Please clarify. Also, I note that while you assert information about a 2013 G-P-commissioned Use Attainability Analysis for the area, you fail to note the 2007 EPA-commissioned Use Attainability Analysis on the same topic, which found, among other things: “The waters of Coffee Creek and Mossy Lake have the potential to support aquatic life indicative of streams in the ecoregion.” (ES-2.) That 2007 UAA therefore recommends:

The presence of indicator species ... within the Reference Site, and occasionally within the sites downstream of the outfall, supports an aquatic life use designation for Coffee Creek and Mossy Lake. Data collected in this survey indicate that the aquatic life in the Mossy Lake and Coffee Creek systems is impaired. The source of that impairment is likely the outfall from the Georgia Pacific facility in Crossett, AR.

(ES-3.) I am unaware of any relevant changes in the area between 2007 and 2013.

Fifth, at *paragraph g.*, you provide a link to an Arkansas Department of Health Report on Drinking Water, but do not state a particular TELC client assertion that you are seeking to rebut. I appreciate your effort to make us aware of the report.

Sixth, also at *paragraph g.*, you note G-P has engaged in H₂S ambient air monitoring since October 2014 and mention dates where the monitor “recorded levels above the suggested intermediate exposure MRL of 70 ppb.” What caused those levels to be so high? What action has G-P taken to avoid a re-occurrence?

Additionally, one of TELC’s clients’ concerns is that G-P’s permit violates 40 C.F.R. § 125.3(e) (“Technology-based treatment requirements are applied prior to or at the point of discharge.”) and 40 C.F.R. § 125.3(f) (“Technology-based treatment requirements cannot be satisfied through the use of ‘non-treatment’ techniques such as flow augmentation [e.g., dilution] and in-stream mechanical aerators.”). EPA raised this issue in its May 19, 2017, interim objection (“Based on Mossy Lake being the receiving stream, both technology based limits and water quality based limits should apply prior to discharge into that water body, and there should be no treatment technology below the discharge to Mossy Lake.”). You offer no argument to rebut this. Does your client agree with the concern? If not, why not? Please provide any supporting documentation.

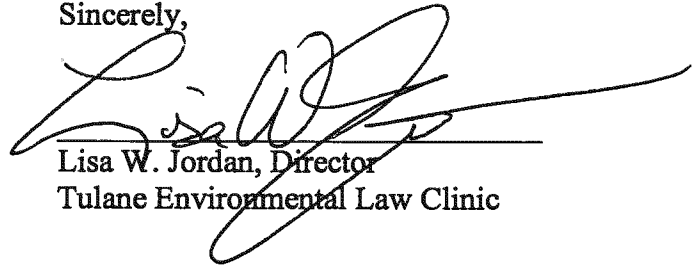
Finally, our clients were alarmed by the October 28, 2017, fire that raged for a day at G-P’s abandoned plywood mill, causing evacuations and spreading insulation from the mill’s roof across Crossett, including on people’s lawns. News reports indicated that ADEQ had conducted no air monitoring to determine whether residents were exposed to harmful or toxic substances, and we have no information on any G-P analyses. Please state whether G-P conducted any air monitoring or analysis of the composition of the materials in the smoke and ash and provide the results of any such reports. Stepping up to fill the apparent void left by state agency and G-P inaction, Wilma Subra of LEAN conducted a health survey of the community, which reflected

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numerous health impacts from the fire. That report is attached as Exhibit B and provided to EPA by way of copies to this letter.

Ideally, we can work together to resolve TELC's clients' concerns about G-P's use of Coffee Creek, Mossy Lake, and other waters of the United States for its operations, as well as their other concerns with G-P's operations in Crossett, Arkansas. I look forward to your responses to my requests in this letter.

Sincerely,



Lisa W. Jordan, Director
Tulane Environmental Law Clinic

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December 8, 2017

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July 11, 2017

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- c. Wastewater from the clarifier is routed through conveyance channels to the aeration basin for secondary treatment, and water from this basin is discharged through the mill’s NPDES permitted discharge point, which flows into the upper reaches of Mossy Lake. The mill’s permitted wastewater treatment system and associated channels are wholly separate and distinct from Coffee Creek, which is an ephemeral stream prior to its confluence with Mossy Lake.
- d. TELC alleges that portions of the wastewater treatment system occupy waters of the U.S. and, as a result, discharges into the system must be permitted. This position is contrary to both the facts set forth above and the law. TELC fundamentally misreads the “waste treatment system” exclusion under the Clean Water Act. TELC claims that the exclusion does not apply to treatment ponds constructed in waters of the U.S., but TELC ignores the fact that this “exclusion from the exclusion” was suspended by EPA and has never been reinstated. *See* 45 Fed. Reg. 48,620 (July 21, 1980). TELC also ignores the fact that the reported case law applies the exclusion not just to treatment ponds but also to the conveyances leading into those ponds. *See, e.g., Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F. 3d 177 (4th Cir. 2009). In short, to the extent the wastewater treatment system was constructed in the historic Coffee Creek drainage, the entire system, from the mill site to the upper reaches of Mossy Lake, is excluded.
- e. TELC’s allegation that Georgia-Pacific’s discharge eliminates the West Crossett community’s “use of Coffee Creek as a natural resource” is inaccurate on two fronts: (1) Georgia-Pacific’s untreated wastewater is not discharged into Coffee Creek; and (2) the vast majority of Coffee Creek is on private property with no access to the public.
- f. Under the legally “applicable” water quality standards for Arkansas (*see* 40 CFR § 131.21), use variations are in place for Coffee Creek and Mossy Lake. NPDES Permit No. AR0001210 ensures compliance with the applicable standards, and

Lisa Lavie Jordan, Director
Corinne Van Dalen, Supervising Attorney
July 11, 2017
Page 4

Georgia-Pacific is in compliance with this permit. ADEQ and EPA have indicated that they plan to review the use variations as part of the next triennial review of water quality standards beginning in 2017. As part of that review, the agencies will need to consider the use attainability analyses conducted for Coffee Creek and Mossy Lake, the most recent of which was completed in November 2013. Mossy Lake, and the segment of Coffee Creek downstream from Mossy Lake, are subject to seasonal flooding and are inundated by the Ouachita River approximately 43% of the year. Any existing uses in these waters – which are co-extensive with Georgia-Pacific's operations in Crossett since 1937 – are necessarily influenced by these seasonal conditions.

- g. The Arkansas Department of Health (ADH) and the Agency for Toxic Substance and Disease Registry (ATSDR) recently completed and released a joint health consultation for Crossett.¹ This health consultation was based on years of statistical health data maintained by ADH for Ashley County and the State of Arkansas. This study concluded “there is no significant difference to indicate elevated cancer cases for Ashley County as compared with the state of Arkansas.” Also, working cooperatively with the EPA, ADEQ and ADH, Georgia-Pacific has voluntarily been operating a continuous H₂S ambient air monitor since October 2014. This monitoring confirms that emissions from the wastewater treatment system are not creating unsafe or harmful conditions. In fact, between November 1, 2014 and July 1, 2017, there were approximately 64 hours where the H₂S monitor recorded levels above the suggested intermediate exposure MRL of 70 ppb, when measured over a 30 minute rolling average. This represents 0.27% of the 23,352 total hours monitored. Georgia-Pacific notes that all the data it has collected to date has been below the applicable MRLs when the appropriate averaging periods established by ATSDR are applied.

Georgia-Pacific has repeatedly attempted to correct TELC about its misstatements and directed TELC to the relevant law. We will have no choice but to assume that if you continue to perpetuate and promote misinformation, your purpose is to harm and interfere with Georgia-Pacific's lawful and permitted operations. If TELC persists in its tactics, we will be forced to take this matter to appropriate authorities for relief.

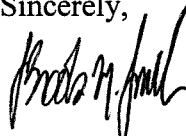
¹ June 6, 2016: Review of Community Drinking Water and Health Outcome Data in Response to Community Requests of Residents Near the Georgia-Pacific Corporation Crossett Paper Operations 100 Mill Supply Road Crossett, Ashley County, Arkansas 71635; EPA Identification Number: ARD035466648 AFIN Number: 02-00013; Prepared By: Arkansas Department of Health Under a Cooperative Agreement with the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry Atlanta, Georgia 30333; http://www.atsdr.cdc.gov/HAC/pha/GeorgiaPacificCorporation/Georgia_Pacific_Corporation_Crossett_AR_HC_06-06-2016_508.pdf

TROUTMAN
SANDERS

Lisa Lavie Jordan, Director
Corinne Van Dalen, Supervising Attorney
July 11, 2017
Page 5

Please understand that we take this matter very seriously. Georgia-Pacific has an unwavering commitment to compliance and protection of human health and the environment and has been and remains willing to engage with any stakeholder that has concerns or questions about its operations. We will not, however, stand by and allow any party to falsely portray Georgia-Pacific's operations to government officials. If you have any questions or would like to discuss anything further, please call me.

Sincerely,



Brooks M. Smith
Counsel to Georgia-Pacific

BMS:hmn

cc: Matthew Tejada
Director, Office of Environmental Justice
U.S. Environmental Protection Agency
Tejada.matthew@epa.gov

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Burrell.monica@epa.gov

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Lilian Dorka
Office of Civil Rights
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Dorka.lilian@epa.gov

TROUTMAN SANDERS

Lisa Lavie Jordan, Director
Corinne Van Dalen, Supervising Attorney
July 11, 2017
Page 6

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TROUTMAN SANDERS

Lisa Lavie Jordan, Director
Corinne Van Dalen, Supervising Attorney
July 11, 2017
Page 7

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Corinne Van Dalen
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cvandale@tulane.edu

Louisiana Environmental Action Network

P. O. Box 66323, Baton Rouge, Louisiana 70896

LEANWEB.org

Human Health Impacts Associated with the Georgia-Pacific Crossett Plywood Mill Fire



Report prepared by:

Wilma Subra, subracom@aol.com

Louisiana Environmental Action Network

November 18, 2017

Human Health Impacts Associated with the Georgia-Pacific Crossett Plywood Mill Fire

On October 28, 2017 midmorning, a fire erupted at the Georgia-Pacific Crossett Plywood Mill in Crossett, Arkansas. The fire started while contractors were doing demolition work at the closed Plywood Mill. Due to high wind conditions, the fire quickly spread. Fire Departments from the surrounding areas assisted in battling the blaze. Due to demolition activities, the water had been cut off on the Plywood Mill site.

Evacuations of residents and businesses from First Avenue to Third Avenue, downwind of the facility, were conducted by the Crossett Police Department. Smoke from the fire as well as cinders and debris spread and were deposited within the Crossett community. Smoke, chemicals and particulate matter released by the fire caused a host of health impacts.

Crossett Health Assessment – Health Impacts Associated with the Georgia-Pacific Plywood Mill Fire

Crossett community members complained of health impacts associated with the fire event. A health assessment survey instrument was developed and distributed to individuals in the Crossett community. The Crossett Health Assessment was designed to record the health impacts experienced by Crossett community members during and immediately after the fire event.

54 individuals participated in the health assessment survey.

26 males

27 females

1 unidentified

Males ranged in age from 6 to 78

Females ranged in age from 6 to 78

Most Prevalent Health impacts

Health Impact	Number of Individuals	Percent
Sinus Problems	45	83%
Throat Irritation	38	70%
Eye Irritation	38	70%
Headaches	37	69%
Blurred Vision	36	67%
Shortness of Breathe	35	65%
Difficulty Breathing	34	63%
Skin Irritation	30	55%
Dizziness	27	50%
Persistent Coughing	26	48%
Nasal Congestion	26	48%
Wheezing	25	46%
Allergies	25	46%
Frequent Tearing of Eyes	22	41%

Health Categories

Sinus and Respiratory Impacts - 100% of Individuals Surveyed

Sinus Problems	83%
Throat Irritation	70%
Shortness of Breathe	65%
Difficulty Breathing	63%
Persistent Coughing	48%
Nasal Irritation	48%
Wheezing	46%
Allergies	46%
Persistent Hoarseness	37%
Chronic Cough	33%
Loss of Sense of Smell	24%
Asthma attacks	20%

Vision and Eye Impacts -100% of Individuals Surveyed

Eyes Burning	70%
Headache	69%
Blurred Vision	67%
Frequent Tearing of Eyes	41%
Dry Eyes	31%
Difficulty in Vision	28%
Chronic Eye Irritation	17%

Neurological - 74% of Individuals Surveyed

Dizziness	50%
Balance Difficulty	33%
Forgetfulness	26%
Staggering/Stumbling	20%

Behavior/Mood- 70% of Individuals Surveyed

Sleep Disorders	31%
Sleep Disturbance	26%
Tension	22%
Increased Fatigue	20%
Depression	17%

Digestive/Stomach – 69% of Individuals Surveyed

Diarrhea	35%
Frequent Nausea	28%
Vomiting	22%
Loss of Appetite	20%
Persistent Indigestion	15%

Skin - 56% of Individuals Surveyed

Skin Irritation	56%
Skin Problems	31%
Skin Rashes	31%

Ear/Mouth - 54% of Individuals Surveyed

Ringling in Ears	30%
Noises in Ears	11%
Loss of Sense of Taste	9%
Difficulty Hearing	9%
Sores/Ulcers in Mouth	9%

Muscle and Joints - 41% of Individuals Surveyed

Arthritis	33%
Joint Pain	30%
Muscle Pain	19%

Cardiovascular - 31% of Individuals Surveyed

High Blood Pressure	31%
Hypertension	11%

Urinary/Urological – 30% of Individuals Surveyed

Frequent Urination	20%
Discolored Urine	5%

Comments Provided by Individuals Surveyed

Smelled smoke in house all weekend.

Had to evacuate church due to dense smoke.

A number of individuals were in the evacuation area.

A number of individuals had to leave their homes due to the smoke and chemicals in the air negatively impacting their health.

Odors from the fire were severe.

Many individuals were very depressed.

Individuals experienced an increase in fatigue.

Debris and ash from the fire fell in yards.

A large amount of black smoke impacted the community.

As a result of the fire, there was five days of poor air quality.

Many individuals are concerned about chemicals and their effects on the health and environmental conditions in the neighborhood.

Community Health Needs

There is a need for health care and continuous health monitoring to be provided to the community of Crossett as a result of the fire.

Healthcare is needed to treat the health conditions that resulted from exposure to the fire, smoke and chemicals released by the fire event.

Ongoing health monitoring is needed to track the long lasting negative impacts of community exposure to the contaminants released by the fire.

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 3/24/2021 9:15:16 PM (UTC)
Subject: 27R-16-R6 ADEQ IRA Inquiry
Arkansas DEQ
DRAFT Informal Resolution Agreement Complaint No 27R-16-R6_DEQ-edits.docx

As your schedule permits, let's discuss the IRA and its development. I attach a few earlier versions of the draft and can provide some background.

Jeryl W. Covington
Environmental Protection Specialist
U.S. Environmental Protection Agency
Office of General Counsel|External Civil Rights Compliance Office
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524
Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
covington.jeryl@epa.gov

To: Rhines, Dale[rhines.dale@epa.gov]; Temple, Kurt[Temple.Kurt@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Wed 7/1/2020 2:03:02 PM (UTC)
Subject: Arkansas DEQ
DRAFT Informal Resolution Agreement Complaint No 27R-16-R6 DEQ-edits 20200629.docx

Hello Team, please see Michael's note below and the attached. We are set for this afternoon's meeting.

Thanks! Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: McAlister, Michael <MCALISTER@adeq.state.ar.us>

Sent: Wednesday, July 1, 2020 9:06 AM

To: Dorka, Lilian <Dorka.Lilian@epa.gov>

Subject: RE: draft

Lilian,

Basil and I are ready to talk about the proposed edits we made to the draft that came out of our last discussion (please see attached.) This is Basil's and my work product – we have not had a chance to discuss this with the senior management in detail or have it reviewed/approved, but are hopeful that it addresses some of the issues raised and maybe gives us a path forward. I look forward to a productive discussion this afternoon and continued progress towards resolution.

Thanks!

Michael

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

Sent: Tuesday, June 30, 2020 6:25 PM

To: McAlister, Michael

Subject: Re: draft

Hi Michael , checking in to make sure we are set for tomorrow. Thanks!

Lilian S. Dorka, Director
External Civil Rights Compliance Office
EPA, Office of General Counsel
WJC-North Room 2524
202-564-9649 - Office
202-695-9888 - Cell
Sent from my iPhone

On Jun 25, 2020, at 12:12 PM, Dorka, Lilian <Dorka.Lilian@epa.gov> wrote:

Hi Michael – hope all is great with you! Just wanted to check in and see if you had any paper you wanted to share before this afternoon's call? Thanks! Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: McAlister, Michael <MCALISTER@adeq.state.ar.us>

Sent: Wednesday, June 3, 2020 3:54 PM

To: Dorka, Lilian <Dorka.Lilian@epa.gov>

Cc: Hicks, Basil <hicks@adeq.state.ar.us>; Linck, Julie <Linck@adeq.state.ar.us>; Khoury, Shane <Shane.Khoury@adeq.state.ar.us>

Subject: draft

Importance: High

Lilian,

Attached is the draft with suggested edits/comments.

ED_006641_00000235-00001

We can talk through any questions/concerns tomorrow.

Thanks,

Michael McAlister | Deputy Chief Counsel

Energy and Environment | **Office of Chief Counsel**

5301 Northshore Drive | North Little Rock, AR 72118

t: 501.682.0918 | e: mcAlister@adeq.state.ar.us

<image001.png>

To: Martinez, Maria[Martinez.Maria@epa.gov]
Cc: Khan, Zahra[Khan.Zahra@epa.gov]; Ryland, Renea[Ryland.Renea@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Hoang, Anhthu[Hoang.Anhthu@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Tue 1/25/2022 9:01:38 PM (UTC)
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Thanks Maria!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Martinez, Maria <Martinez.Maria@epa.gov>
Sent: Tuesday, January 25, 2022 2:23 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Excellent! Thank you Lilian for the expedited response. We will make sure you get a copy of the final letter and we will keep you posted as needed.

Maria

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Tuesday, January 25, 2022 1:06 PM
To: Martinez, Maria <Martinez.Maria@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Hi Maria, we do not have any questions/concerns about the draft letter. Thanks for the checking in with us! Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Dorka, Lilian
Sent: Tuesday, January 25, 2022 9:27 AM
To: Martinez, Maria <Martinez.Maria@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R,

Motion to Adopt Amendments to Rule 2

Thanks Maria, we will take a look ASAP.

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
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U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Martinez, Maria <Martinez.Maria@epa.gov>

Sent: Tuesday, January 25, 2022 9:16 AM

To: Dorka, Lilian <Dorka.Lilian@epa.gov>

Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>

Subject: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Good morning Lilian,

I hope all is well with you. I am forwarding this email on behalf of Charles Maguire. Region 6 is planning on responding to Arkansas January 14, 2021, notification that they plan to present to their Commission the Rule 2 changes that affect Mossy Lake and Coffee Creek which in turn affect the Georgia-Pacific NPDES permit requirements. Our proposed response is similar to what we sent in August 2021 and restates our position on Rule 2 and the necessary protections for Mossy Lake and Coffee Creek. We would appreciate ECRCO's input as soon as reasonably possible since we are needing to send the letter for review to our RA's Office before COB today, Tuesday (1/25) and the letter has to be issued before Friday's (1/28) Commission Meeting.

The attached Word document contains the working draft of the response letter to the Commission's Chair. Also included are the two enclosures that are referenced in our letter.

Thank you,

Maria

Maria L. Martinez
Chief, Permitting & Water Quality Branch (6WD-P)
1201 Elm Street, Suite 500
Dallas, TX 75270
214-665-2230

From: Khan, Zahra <Khan.Zahra@epa.gov>

Sent: Tuesday, January 18, 2022 8:06 AM

To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Maguire, Charles <maguire.charles@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>

Cc: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>

Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

FYI, I have received the following from DEQ rep, Basic Hicks.

From: Hicks, Basil <hicks@adeq.state.ar.us>

Sent: Friday, January 14, 2022 12:50 PM

To: Khan, Zahra <Khan.Zahra@epa.gov>

Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

ED_006641_00000238-00002

Zahra,

I am forwarding this to you to keep you up to date on this matter.

Please let me know if you have any questions or if you would like to talk.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us

From: McAlister, Michael
Sent: Friday, January 14, 2022 10:23 AM
To: Moulton, Charles; Goff, Patricia
Cc: Hicks, Basil; York, Alan; Alberg, Peter
Subject: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Judge Moulton and Secretary Goff,
DEQ respectfully requests that consideration of DEQ's pending motion to adopt proposed changes to Rule 2 (filed in the above-referenced docket on 08/09/2021, with Exhibits B-1, C-1, and C-2 as filed on 11/24/2021) be placed on the agenda for decision at the Commission's next upcoming meeting on January 28, 2022.
DEQ also submits a revised Proposed Minute Order (Exhibit F, attached hereto) to replace the previously submitted proposals and to be included as part of the submission for consideration and approval.
Please be advised that DEQ is providing notice of this request to Charles W. Maguire, Director – Water Division, EPA Region 6.
Please contact me if you have any questions regarding this request.
Thank you,

Michael McAlister | Deputy Chief Counsel
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0918 | e: mcalister@adeq.state.ar.us

To: Johnson, Johahna[Johnson.Johahna@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Hoang, Anhthu[Hoang.Anhthu@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Tue 1/25/2022 7:04:29 PM (UTC)
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Thanks!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Johnson, Johahna <Johnson.Johahna@epa.gov>
Sent: Tuesday, January 25, 2022 12:55 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Hello,

I don't have any legal concerns.

Thanks,

Johahna Johnson
Civil Rights and Finance Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-6119

Pronouns: she/her/hers

This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Tuesday, January 25, 2022 11:35 AM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

OK, sounds good, thanks. Johahna, please let me know if you have any concerns. Thanks!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Covington, Jeryl <Covington.Jeryl@epa.gov>
Sent: Tuesday, January 25, 2022 11:34 AM
To: Khan, Zahra <Khan.Zahra@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

The position taken by Region 6 is consistent with the prior discussions.

From: Khan, Zahra <Khan.Zahra@epa.gov>
Sent: Tuesday, January 25, 2022 11:16 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

I have no comments.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Tuesday, January 25, 2022 9:29 AM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: FW: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2
Importance: High

Jeryl, Zahra, and Johahna, (and Anhthu if you have a chance?)

Can you please take a look at this short letter asap and let me know by 2:00 pm whether you have any comments? Region must present this to their RA by COB today. Thanks!!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell
Pronouns: she/her/hers

From: Martinez, Maria <Martinez.Maria@epa.gov>
Sent: Tuesday, January 25, 2022 9:16 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>
Subject: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Good morning Lilian,

I hope all is well with you. I am forwarding this email on behalf of Charles Maguire. Region 6 is planning on responding to Arkansas January 14, 2021, notification that they plan to present to their Commission the Rule 2 changes that affect Mossy Lake and Coffee Creek which in turn affect the Georgia-Pacific NPDES permit requirements. Our proposed response is similar to what we sent in August 2021 and restates our position on Rule 2 and the necessary protections for Mossy Lake and Coffee Creek. We would appreciate ECRCO's input as soon as reasonably possible since we are needing to send the letter for review to our RA's Office before COB today, Tuesday (1/25) and the letter has to be issued before Friday's (1/28) Commission Meeting.

The attached Word document contains the working draft of the response letter to the Commission's Chair. Also

ED_006641_00000240-00002

included are the two enclosures that are referenced in our letter.

Thank you,

Maria

Maria L. Martinez
Chief, Permitting & Water Quality Branch (6WD-P)
1201 Elm Street, Suite 500
Dallas, TX 75270
214-665-2230

From: Khan, Zahra <Khan.Zahra@epa.gov>
Sent: Tuesday, January 18, 2022 8:06 AM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Maguire, Charles <maguire.charles@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>
Cc: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

FYI, I have received the following from DEQ rep, Basic Hicks.

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Friday, January 14, 2022 12:50 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Zahra,

I am forwarding this to you to keep you up to date on this matter.

Please let me know if you have any questions or if you would like to talk.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us

From: McAlister, Michael
Sent: Friday, January 14, 2022 10:23 AM
To: Moulton, Charles; Goff, Patricia
Cc: Hicks, Basil; York, Alan; Alberg, Peter
Subject: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Judge Moulton and Secretary Goff,
DEQ respectfully requests that consideration of DEQ's pending motion to adopt proposed changes to Rule 2 (filed in the above-referenced docket on 08/09/2021, with Exhibits B-1, C-1, and C-2 as filed on 11/24/2021) be placed on the agenda for decision at the Commission's next upcoming meeting on January 28, 2022.
DEQ also submits a revised Proposed Minute Order (Exhibit F, attached hereto) to replace the previously submitted proposals and to be included as part of the submission for consideration and approval.
Please be advised that DEQ is providing notice of this request to Charles W. Maguire, Director – Water Division, EPA Region 6.
Please contact me if you have any questions regarding this request.
Thank you,

Michael McAlister | Deputy Chief Counsel
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0918 | e: mcalist@adeq.state.ar.us

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
From: Hoang, Anhthu[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=767134B1927D4106A721B3D06CBBB9D9-HOANG, ANHTHU]
Sent: Tue 1/25/2022 5:52:33 PM (UTC)
Subject: RE: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

I don't have any comment. It's consistent with what the Region told us before.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Tuesday, January 25, 2022 9:29 AM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: FW: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2
Importance: High

Jeryl, Zahra, and Johahna, (and Anhthu if you have a chance?)

Can you please take a look at this short letter asap and let me know by 2:00 pm whether you have any comments? Region must present this to their RA by COB today. Thanks!!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Martinez, Maria <Martinez.Maria@epa.gov>
Sent: Tuesday, January 25, 2022 9:16 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>
Subject: Opportunity for Input - Region 6 Response to APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Good morning Lilian,

I hope all is well with you. I am forwarding this email on behalf of Charles Maguire. Region 6 is planning on responding to Arkansas January 14, 2021, notification that they plan to present to their Commission the Rule 2 changes that affect Mossy Lake and Coffee Creek which in turn affect the Georgia-Pacific NPDES permit requirements. Our proposed response is similar to what we sent in August 2021 and restates our position on Rule 2 and the necessary protections for Mossy Lake and Coffee Creek. We would appreciate ECRCO's input as soon as reasonably possible since we are needing to send the letter for review to our RA's Office before COB today, Tuesday (1/25) and the letter has to be issued before Friday's (1/28) Commission Meeting.

The attached Word document contains the working draft of the response letter to the Commission's Chair. Also included are the two enclosures that are referenced in our letter.

Thank you,

Maria

Maria L. Martinez
Chief, Permitting & Water Quality Branch (6WD-P)
1201 Elm Street, Suite 500

From: Khan, Zahra <Khan.Zahra@epa.gov>
Sent: Tuesday, January 18, 2022 8:06 AM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Maguire, Charles <maguire.charles@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>
Cc: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>
Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

FYI, I have received the following from DEQ rep, Basic Hicks.

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Friday, January 14, 2022 12:50 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Zahra,

I am forwarding this to you to keep you up to date on this matter.

Please let me know if you have any questions or if you would like to talk.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us

From: McAlister, Michael
Sent: Friday, January 14, 2022 10:23 AM
To: Moulton, Charles; Goff, Patricia
Cc: Hicks, Basil; York, Alan; Alberg, Peter
Subject: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Judge Moulton and Secretary Goff,
DEQ respectfully requests that consideration of DEQ's pending motion to adopt proposed changes to Rule 2 (filed in the above-referenced docket on 08/09/2021, with Exhibits B-1, C-1, and C-2 as filed on 11/24/2021) be placed on the agenda for decision at the Commission's next upcoming meeting on January 28, 2022.
DEQ also submits a revised Proposed Minute Order (Exhibit F, attached hereto) to replace the previously submitted proposals and to be included as part of the submission for consideration and approval.
Please be advised that DEQ is providing notice of this request to Charles W. Maguire, Director – Water Division, EPA Region 6.
Please contact me if you have any questions regarding this request.
Thank you,

Michael McAlister | Deputy Chief Counsel
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0918 | e: mcalist@adeq.state.ar.us

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 8/1/2018 6:01:53 PM (UTC)
Subject: 2018.08.01 Draft INFORMAL RESOLUTION AGREEMENT.docx
2018.08.01 Draft INFORMAL RESOLUTION AGREEMENT.docx

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Tue 7/31/2018 10:44:37 PM (UTC)
Subject: 2018.07.31 COMPARE DOC INFORMAL RESOLUTION AGREEMENT (002).docx
2018.07.31 COMPARE DOC INFORMAL RESOLUTION AGREEMENT (002).docx

I made a few edits.

Please speak with me in the morning.

To: Khan, Zahra[Khan.Zahra@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Mon 8/6/2018 6:58:09 PM (UTC)
Subject: Draft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6 DORKA REDLINE to Region 6 Draft 8-6-18 (003).docx
Draft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6 DORKA REDLINE to Region 6 Draft 8-6-18 (003).docx

I added FN 13.

To: Khan, Zahra[Khan.Zahra@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Mon 8/6/2018 6:25:25 PM (UTC)
Subject: Draft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6 DORKA REDLINE to Region 6 Draft 8-6-18.docx
Draft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6 DORKA REDLINE to Region 6 Draft 8-6-18.docx

I have quickly reviewed and modified the draft resolution. I want to confirm a date on one of the COs; I think that the information was in email but am not sure (you may recall the date of the CO versus the signing date and the enforcement dates being different).

I will also look at the WQS citation for ADEQ that Lilian is requesting (This question was posed to Region 6).

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]; Temple, Kurt[Temple.Kurt@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Rhodes, Julia[Rhodes.Julia@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Fri 8/10/2018 1:40:52 PM (UTC)
Subject: Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 - 8-16-18.docx
Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 - 8-16-18.docx

I have reviewed the final draft informal resolution for ADEQ and did not identify any glaring omissions. I did notice that in Section IV.C, there are now A-O elements in this edition versus A-N.

In reading the document again, I just realized some organization issues - common action components for ADEQ are not grouped together.

For example, the introduction of the proposed community meeting (III.C) comes before the elements of the community discussion. Similarly, NPDES obligations are bisected with CAA obligations throughout.

Please consider the following modified version. I have grouped like items together making the corrections with respect to references within. I have grouped the broader community planning and training elements together too.

Thoughts?

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 8/1/2018 4:56:25 PM (UTC)
Subject: 2018.07.31 COMPARE DOC INFORMAL RESOLUTION AGREEMENT (002) (003).docx
2018.07.31 COMPARE DOC INFORMAL RESOLUTION AGREEMENT (002) (003).docx

I have revised the draft document; added the sampling language back.

Please see me.

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Mon 8/6/2018 7:31:47 PM (UTC)
Subject: RE: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6
Draft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6 DORKA REDLINE to Region 6 Draft 8-6-18 (003).docx

I am attaching my latest edits which include FN 13 (for Region 6 to confirm the ADEQ WQS).

From: Dorka, Lilian
Sent: Monday, August 06, 2018 3:28 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>
Subject: RE: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6

Zahra, I need to send region 6 a Redline – not a clean copy. However, the redline you just sent me has a bunch of repeated words etc. Do you have any changes or just Jeryl? I will just make the changes manually to my version. Can you just send me Jeryl's edits without doing a compare doc please? Any your edits/comments if you have any? Thanks!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649

From: Khan, Zahra
Sent: Monday, August 6, 2018 3:25 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>
Subject: RE: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6

I took the very latest document version Jeryl sent me, and did a compare doc with the R6 version. Then I added that compare doc red line and a clean version of that document. Those are the two that were sent to you.

From: Dorka, Lilian
Sent: Monday, August 6, 2018 3:23 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>
Subject: RE: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6

Hi Zahra – what version is this? It does not appear to be the version I sent you? There are many words repeated and Marcia's comment is back in which I had deleted? Did you merge a couple of docs? So that I don't have to go back in and clean the doc up, can you just tell me what changes either you or Jeryl made? I see Jeryl that you made a comment re Supplemental Environmental Projects – I had that at first but was not sure bec I also saw state enforcement plan? So I think I will just put both in my comment for region to consider. Did you have any other comments/changes?

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649

From: Khan, Zahra
Sent: Monday, August 6, 2018 3:15 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>

ED_006641_00000257-00001

Cc: Rhines, Dale <rhines.dale@epa.gov>

Subject: RE: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6

Attached, see both Draft Redline and Draft Clean versions of the agreement. Let me know if anything is out of place.

From: Dorka, Lilian

Sent: Monday, August 6, 2018 1:30 PM

To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>

Cc: Rhines, Dale <rhines.dale@epa.gov>

Subject: RE: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6

I did not make that change. Could you please redline the appropriate changes Jeryl on that document to make these references correct? Thanks!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649

From: Covington, Jeryl

Sent: Monday, August 6, 2018 1:28 PM

To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>

Cc: Rhines, Dale <rhines.dale@epa.gov>

Subject: RE: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6

I am reviewing and immediately noticed that the EPA actions against the facility has been changed to reflect that all of the actions were against the paper plant Section III.C.) This edit is not accurate. The EPA actions are as follows:

RCRA action against Georgia Pacific LLC
CAA ACO against Georgia-Pacific Chemical, LLC Crossett, Arkansas
RCRA CAFO against Georgia-Pacific, LLC
NPDES CAFO against Georgia Pacific, LLC, a Delaware Company

You may recall that the plant facility buildings have some different operations and are permitted (regulated) differently by the different EPA/ADEQ programs due to the type of operations. These facility names are documented as reported on each of the R6 enforcement actions. Also, footnote 2 should reference the docket number as an 'NO'.

Not sure how you wish to identify the facility as this response was provided in an earlier reply wrt the CRFLO comment that was provided again.

I will continue to review.

From: Dorka, Lilian

Sent: Monday, August 06, 2018 1:18 PM

To: Khan, Zahra <Khan.Zahra@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>

Cc: Rhines, Dale <rhines.dale@epa.gov>

Subject: ADEQ DRAFT Informal Resolution Agreement Redline for Region 6

Importance: High

Hi ADEQ Team, here is the REDLINE that I would like to send back to Region 6 by COB today. I have removed all comments other than those that we want to send to Region 6 or ADEQ. Could you please take a look and let me know by 4:00 if you have any concerns? Thanks!! Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

ED_006641_00000257-00002

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]; Temple, Kurt[Temple.Kurt@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Rhodes, Julia[Rhodes.Julia@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Fri 8/10/2018 2:54:28 PM (UTC)
Subject: Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 - 8-16-18 (002).docx
Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 - 8-16-18 (002).docx

Per prior message, modification made in Section IV.C (A-O) on the original submission.

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 2/13/2019 5:21:48 PM (UTC)
Subject: 2019.02.13 (REVISED) Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6_.docx
2019.02.13 (REVISED) Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 .docx

I am re-sending this draft. The prior versions did not reference Part 5.

Since we do not have a template for the boilerplate language established and finalized, I simply added the references here.

Please review, check, and modify and appropriate. The introduction has Part 5 add but not in track changes.

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 3/13/2019 5:33:12 PM (UTC)
Subject: Draft Resolution: 27R-16-R6
2019.03.13 UPDATED REDLINE Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx
2019.03.13 UPDATED CLEAN Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx

I believe that I have captured some of the revisions discussed during the call with Region 6. Please review as I hope that I have identified each of the GP references correctly. (Note: I bring to your attention one GP reference in Section III.H. The GP name reference was moved to a footnote from earlier comment response.)

Also, please note that I have not included placeholders for the negotiation notifications for the recipient.

Jeryl W. Covington
Environmental Protection Specialist
U.S. Environmental Protection Agency
Office of General Counsel|External Civil Rights Compliance Office
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524
Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
Fax: (202) 565-0196
covington.jeryl@epa.gov

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 3/13/2019 6:26:05 PM (UTC)
Subject: Draft Resolution: 27R-16-R6
2019.03.13 UPDATED REDLINE Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx
2019.03.13 UPDATED CLEAN Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx

I believe that I have captured some of the revisions discussed during the call with Region 6. Please review as I hope that I have identified each of the GP references correctly. (Note: I bring to your attention one GP reference in Section III.H. The GP name reference was moved to a footnote from earlier comment response.)

Also, please note that I have not included placeholders for the negotiation notifications for the recipient.

Jeryl W. Covington
Environmental Protection Specialist
U.S. Environmental Protection Agency
Office of General Counsel|External Civil Rights Compliance Office
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524
Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
Fax: (202) 565-0196
covington.jeryl@epa.gov

From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Location: Microsoft Teams Meeting
Importance: Normal
Subject: FW: EPA Complaint No. 27R-16-R6: Discussion of Draft Informal Resolution Agreement
Start Time: Thur 12/10/2020 5:00:00 PM (UTC)
End Time: Thur 12/10/2020 6:00:00 PM (UTC)
Required Attendees: mcalister; Hicks, Basil; Covington, Jeryl
[2020.08.24 REVISED DRAFT IRA Complaint No 27R-16-R6-DEQ edits and comments-20201119.docx](#)

Hello Mike and Basil, I see you have not accepted this meeting invite. We changed the time to 11:00 Central so that Michael could participate. Hope that you can participate, please let me know. Thanks!!

-----Original Appointment-----
From: Covington, Jeryl <Covington.Jeryl@epa.gov>
Sent: Thursday, November 19, 2020 5:24 PM
To: Covington, Jeryl; Khan, Zahra; Johnson, Johahna; Dorka, Lilian; Frey, Sarah; Barnett, Cheryl; Vaughn, Gloria; Blanco, Arturo; Burrell, Monica; Brown, Jamesr; Nelson, Russell; Ryland, Renea; Moncrieffe, Marcia; mcalister; Hicks, Basil; Rhines, Dale
Subject: EPA Complaint No. 27R-16-R6: Discussion of Draft Informal Resolution Agreement
When: Thursday, December 10, 2020 12:00 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Review of draft informal resolution agreement.

Microsoft Teams meeting

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To: Covington, Jeryl[Covington.Jeryl@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]; Temple, Kurt[Temple.Kurt@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Wed 7/1/2020 6:17:30 PM (UTC)
Subject: RE: Draft Comments: 27R-16-R6 July 1, 2020 Submission
DRAFT Informal Resolution Agreement Complaint No 27R-16-R6 DEQ-edits.docx

Thanks Jeryl! I am also including Marcia here so that she can see your comments and coordinate accordingly. I'm comfortable raising these points when they present their version (which is what I will suggest.) As for deleting everything in the monitoring section, I don't think that will fly. However, I don't want to spend much time discussing that today before we have a chance to discuss internally. We can consider streamlining it but can't totally delete it.

But let's focus today on the substantive portions and at the end we can offer to send back comments. Any concerns anyone about proceeding this way?

Thanks!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: Covington, Jeryl <Covington.Jeryl@epa.gov>
Sent: Wednesday, July 1, 2020 12:29 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Johnson, Johanna <Johnson.Johanna@epa.gov>
Subject: Draft Comments: 27R-16-R6 July 1, 2020 Submission

Please read the revisions to the agreement just received from ADEQ.
Following my initial review of this draft, some issues are as follows. Please note that this is not all-inclusive but my initial reaction.

The Region will need to consider the language accounting for the WQ background information due to their working on the WQ details with ADEQ. R6 WQ staff should let us know their level of comfort in reporting/documenting this information in a public facing document.

1. In the background information (former section II.C.) the monitoring information has been mostly deleted; some limited information has been provided (refer to the attached early version). ADEQ was requested to provide the status update on the chronological follow-up actions but have deleted the entire section in this part of the agreement.
2. The new II.F.: The community participation will need confirmation from R6 (This is not a new edit but one that I am not sure that ECRCO can state as a fact since we did not attend nor received a roster. R6 may be able to confirm).
3. Section III.A will need the R6 WQ staff to concur with their interactions (current and post).
4. Section III.B, ADEQ has limited the community participation to one (1) person. I do not know if there is a single rep for the community. Not sure why this limitation occurred.
5. ADEQ did provide information on the split samples and the reporting. They will require four (4) split samples during the next twenty-four months from samples taken by Georgia-Pacific Crossett LLC. DEQ and EPA will request the split samples include discharge from Mossy Lake and the aeration basin. GP will be requested to send the samples to EPA's lab for analysis. DEQ will post the results on its website.
6. Section III.D., ADEQ deleted that they will not post to their website the public water WQ monitoring data explanation (Deleted information: *The public water systems' reported monitoring data and explanation of contaminants of concerns will be posted on DEQ's website*). I have not looked at the ADH website and do not know at this time whether this explanation of understanding the data is available.
7. Section III.E. documents that R6 will work with ADEQ to issue an NPDES permit for GP. I am not sure how this will be monitored on our end.

8. ADEQ has eliminated a reference to the AQ monitoring. ECRCO requested mobile AQ monitoring consideration. During the on-site meeting on May 7, 2019, the AQ staff indicated that since the permanent monitoring station could not be established, they would consider an alternative to provide some AQ information to the community and assurance that the AQ is good.
9. ADEQ deleted the air emission factor development with GP. This may be appropriate but we should ask whether GP has been in communications with ADEQ regarding their current/anticipated production and potential permitting implications.
10. ADEQ is not agreeing to have any on-site meetings with the community. In a COVID environment, I understand why this may be the case but not sure that we should request regarding future on sites. ADEQ proposes online tutorials as a form of communications. Not sure whether access limitations exists within the community but I would not be surprised if there were access concerns.
11. Section II.L read as : *"DEQ will request that ADEM help Ashley County to bolster its local emergency planning committee (LEPC). DEQ will provide technical assistance and guidance to Ashley County, as appropriate. DEQ will provide periodic updates on its activities related to its communication with ADEM."* I am not sure how this action will occur since there are no community meetings.
12. ADEQ does document that ECRO will continue to assist with the development of a T6 program.
13. ADEQ has requested an extension of time on some of the commitments as identified in Section IV.

To: Gray, David[gray.david@epa.gov]
Cc: Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]; Harrison, Ben[Harrison.Ben@epa.gov]; Sykes, Terry[Sykes.Terry@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]; Temple, Kurt[Temple.Kurt@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]; Harrison, Brenda[Harrison.Brenda@epa.gov]; Temple, Kurt[Temple.Kurt@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Mon 8/6/2018 9:29:15 PM (UTC)
Subject: draft informal resolution agreement WITH EDITS PER OUR CALL ON 7/31/18
Draft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6 DORKA REDLINE to Region 6 Draft 8-6-18.docx

Hello David,

Thanks again to you and all of our colleagues in Region 6 who have contributed to this process and who have been so very helpful. As we agreed during our call on July 31, attached is a REDLINED Informal Resolution Agreement which contains most of the comments and edits we discussed during our call. There is one new substantive edit on page 5 which we forgot to bring up during our call. We apologize for that oversight; please let us know what you think.

I look forward to getting your thoughts on the attached. Also, thanks very much for your offer to present this to ADEQ on 8/16 and then formally on 8/17. Please let me know if you have any questions.

Regards,

Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649

From: Gray, David
Sent: Thursday, July 26, 2018 7:52 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Sykes, Terry <Sykes.Terry@epa.gov>
Subject: AR draft informal resolution agreement

Good morning Lilian, I hope you are doing well. Sorry that I missed connecting with you during my trip to Washington DC last week to catch up. We have completed our review of the June 29 draft informal resolution agreement for Arkansas under Title VI. I appreciate you and your teams efforts to address my comments from last March.

Attached are comments to the June 29 rewrite of the informal resolution - which has been adjusted to comport with the latest information regarding state standard development, permitting actions and settlement discussions on the enforcement case.

I appreciate my team's efforts to conduct this crosswalk to improve our final agreement with Arkansas. I believe we are scheduled to walk through this version with your team next week and look forward to that discussion. It will be important to finalize the agreement quickly and present it to Arkansas while it reflects the most recent situation. As you are well aware, I am poised to share it with the state and help initiate their response to our informal agreement.

Best,
David

From: Moncrieffe, Marcia
Sent: Monday, July 02, 2018 7:39 AM
To: Clark, Teresa <Clark.Teresa@epa.gov>
Cc: Gray, David <gray.david@epa.gov>; Sykes, Terry <Sykes.Terry@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Vaughn, Gloria <Vaughn.Gloria@epa.gov>
Subject: FW: ADEQ - Crossett

Good morning Teresa,

I hope this email finds you well.

You will see that I have copied you on a previous email regarding the referenced matter and a the request for a date for R6 to discuss the draft resolutions agreement with ECRCO.

This email is an additional remainder to see which day of next week will be a best day for day to have the call with ECRCO. For your information, I will be off on Tuesday the 10th, but if that is the best day for David I will join by phone. Also, I am not sure if David would want R6 to review the document and have a premeeting before with schedule the call with ECRCO- on this I will defer to David.

However, I have attached the document to this email and have copied all R6 staff to this email who have provided input and have worked on this matter so that they can review the document and be prepared for the call(s).

I remain available to offer further assistance.

Happy 4th!

With kind regards,
Marcia

From: Dorka, Lilian
Sent: Monday, July 02, 2018 6:22 AM
To: Gray, David <gray.david@epa.gov>
Cc: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Sykes, Terry <Sykes.Terry@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Payne, James <payne.james@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: Re: ADEQ - Crossett

Great, thanks!

Sent from my iPhone
Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
Environmental Protection Agency
202-564-9649

On Jun 30, 2018, at 12:57 AM, Gray, David <gray.david@epa.gov> wrote:

I am traveling and back after the 4th of July.

Sent from my iPhone
On Jun 29, 2018, at 8:57 PM, Dorka, Lilian <Dorka.Lilian@epa.gov> wrote:

Thanks Marcia! I know David is quite busy so we can plan around him. If you could help us coordinate with his scheduler I would very much appreciate it. Have a great weekend!

Sent from my iPhone
Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
Environmental Protection Agency
202-564-9649

On Jun 29, 2018, at 5:23 PM, Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov> wrote:

Good afternoon Lilian,

I write to let you know that I am in receipt of your email and attachment, thank you. Also, for all to know that I am available the week of the 9th, except Tuesday (7/10).

With kind regards,
Marcia

From: Dorka, Lilian
Sent: Friday, June 29, 2018 3:46 PM
To: Gray, David <gray.david@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Sykes, Terry <Sykes.Terry@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Payne, James <payne.james@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: ADEQ - Crossett
Importance: High

Hi David, hope you are well! Attached, please find what we think is fairly close to a final draft of the proposed Informal Resolution Agreement. This reflects the comments and other assistance we received from Region 6 staff – thanks very much for that!

At this point, I would recommend that we schedule a conference call (we may need an hour and a half) so that we can actually go through each of the sections/provisions to ensure that we are all on the same page, prior to sharing the Agreement with ADEQ.

I would recommend a call during the week of July 9th. My calendar is up to date and I am

happy to accommodate your schedule. We look forward to speaking with you and Region 6 colleagues. Thanks for your assistance and support! Lilian

P/S: Note that there are a couple of asterisked provisions that may need to be updated/expanded as a result of more recent Region 6 action. We can discuss during our call.

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649

From: Moncrieffe, Marcia
Sent: Friday, June 22, 2018 9:23 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Gray, David <gray.david@epa.gov>; Sykes, Terry <Sykes.Terry@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Payne, James <payne.james@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Subject: RE: GP Crossett

Lilian,

Thank you for your follow-up.

I look forward to hearing from you next week and wish you a good weekend.

With kind regards,
Marcia

From: Dorka, Lilian
Sent: Friday, June 22, 2018 8:20 AM
To: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; Gray, David <gray.david@epa.gov>; Sykes, Terry <Sykes.Terry@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Payne, James <payne.james@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Subject: Re: GP Crossett

Hi Marcia, we have been swamped. I just received the draft agreement and am taking a look. We hope to get back to you next week on this. We are anxious to get it moving as well. Thanks for your help!

Sent from my iPhone
Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
Environmental Protection Agency

On Jun 22, 2018, at 8:11 AM, Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov> wrote:

Good morning Zahra,

I hope this email finds you well.

From the emails below, you will see that it has been some time since we here in R6 have had an update and next steps on the GP Crossett draft resolution. I write today to inquire further about the status.

Thank you in advance, as I await your response.

With kind regards,
Marcia

From: Khan, Zahra
Sent: Monday, May 14, 2018 1:49 PM
To: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>
Subject: RE: GP Crossett

Marcia, I will get back to you on this.

From: Moncrieffe, Marcia
Sent: Thursday, May 10, 2018 11:43 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>
Cc: Payne, James <payne.james@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Gray, David <gray.david@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>; Quinones, Edwin <quinones.edwin@epa.gov>
Subject: GP Crossett

Good evening Lilian and Zahra,

I had to leave the office early today, and as one of my “to dos” my plan was to follow-up with your office on the status of the draft resolution agreement for GP Crossett.

This email is not meant to rush you in anyway, as this would not be my place. However, my schedule for the next few months is becoming full with referrals and several administrative cases that were recently assigned, and so I am asking to have a sense of how to schedule my work and be prepared for the next steps in GP Crossett.

Hope all is well, and look forward to hearing from you.

With kind regards,
Marcia

To: Covington, Jeryl[Covington.Jeryl@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]
Cc: Temple, Kurt[Temple.Kurt@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Tue 4/16/2019 5:36:09 PM (UTC)
Subject: FW: Arkansas Title VI
2019.03.13 DRAFT Informal Resolution Agreement Between EPA and ADEQ - EPA Complaint No 27R-16-R6.docx

FYI

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

-----Original Message-----

From: Dorka, Lilian
Sent: Tuesday, April 16, 2019 1:35 PM
To: Payne, James <payne.james@epa.gov>
Subject: RE: Arkansas Title VI

Hi Jim, here is the last clean draft we intended to share with ADEQ. Will you be sharing it through the State AG? Thanks - Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

-----Original Message-----

From: Payne, James
Sent: Tuesday, April 16, 2019 10:11 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: Arkansas Title VI

Hi. Could you resend the draft that's ready to be sent? And let's connect.

Sent from my iPhone

To: Rhines, Dale[rhines.dale@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 7/29/2020 8:53:11 PM (UTC)
Subject: 27R-16-R6 ADEQ Draft IRA
[2020.07.29 REVISED DRAFT Informal Resolution Agreement Complaint No 27R-16-R6.docx](#)
[2020.07.27 REVISED DRAFT Informal Resolution Agreement Complaint No 27R-16-R6 \(002\) jj.docx](#)

I am attaching copies of the ADEQ draft documents for our discussion (CRFLO edits and R6 document).

Today, I was unable to open and share these documents during the TEAMS meeting from the meeting invitation; hence, a separate distribution.

Jeryl W. Covington
Environmental Protection Specialist
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Washington, DC 20460
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covington.jeryl@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

September 3, 2020

Jacob Harper
Arkansas Department of Energy and Environment
5301 Northshore Drive
Little Rock, AR 72118-5317

Re: EPA comments on proposed 2019 triennial revisions to Arkansas's Regulation No. 2

Dear Mr. Harper:

The U.S. Environmental Protection Agency (EPA) would like to provide the enclosed comments on the Arkansas Department of Energy and Environment, Division of Environmental Quality's (ADEQ) proposed amendments to *Regulation No. 2: Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas*. These revisions were considered by the Arkansas Pollution Control and Ecology Commission (Commission) in its June 26, 2020 meeting to consider the ADEQ's petition to initiate rulemaking. These amendments were subsequently presented at the Commissions public hearing on July 29, 2020.

In its review, the EPA noted that Regulation 2 includes some significant proposed revisions, many addressing issues from prior EPA actions. In the enclosed document, we have included comments and recommendations that should be addressed prior to submission to the EPA for action. We also noted a number of revisions made in response to changes in State law. The majority of these are considered nonsubstantive with regard to the Clean Water Act (CWA) and its implementing regulation and do not require direct comment. Our enclosed comments follow the ADEQ's original "Master List" format for consistency with our prior comments, excluding nonsubstantive revisions. Please note that the enclosed questions, comments and recommendations do not constitute a determination by the EPA under CWA §303(c). Approval/disapproval decisions will be made by the Region following the adoption of new/revised standards by the Commission and their formal submission to the EPA.

Thank you for the opportunity to provide these comments on the proposed 2019 triennial revisions to Regulation 2. If you have any questions or concerns, please contact me at (214) 665- 8138, or have your staff contact Russell Nelson at (214) 665-6646 or nelson.russell@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Maria L. Martinez".

Maria L. Martinez
Chief
Permitting & Water Quality Branch

Enclosure

cc: Becky Keogh, Secretary, Arkansas Department of Energy and Environment
Robert Blanz, Ph.D., Associate Director, Office of Water Quality
Joe Martin, Branch Manager, Water Quality Planning, ADEQ

EPA COMMENTS AND RECOMMENDATIONS ON PROPOSED REVISIONS TO ADEQ'S RULE NO. 2

EPA Comments/Recommendations: The following detail the EPA's comments and recommendations on the proposed revisions and other provisions found in ADEQ's Exhibit A: Rule 2 Markup Draft. The EPA's comments and recommendations follow the ADEQ's original "Master List of Revisions" format to simplify both the ADEQ and the public's understanding of comments on a particular provision. Many of these comments were provided to ADEQ by the EPA previously, but have been provided again here alongside new comments on more recent changes to Rule 2 as reflected in the Exhibit A markup draft. ADEQ's revisions considered by the EPA to be non-substantive, or on which the EPA has no comments to provide, have been removed from this list of comments. In addition, the EPA refers to Clean Water Act (CWA) and federal regulation requirements specific to designated uses for Coffee Creek and Mossy Lake and has provided attachments related to comments on other provisions.

Categories of revisions:

Revisions reflecting previous EPA disapproval actions and/or no action taken

Revisions reflecting previous EPA approval actions

Provisions not revised with EPA comments/recommendation

CHAPTER 1: AUTHORITY, GENERAL PRINCIPLES, AND COVERAGE

Regs. 2.102 – 2.106

- Revision:** Reg. 2.104: Strike “, unless the permittee is completing site-specific criteria development or is under a plan approved by the Department, in accordance with Regs. 2.306, 2.308, and the State of Arkansas Continuing Planning Process.”

Justification: In an October 31, 2016 Technical Support Document (TSD), EPA took no action on the inclusion of this phrase; however, they noted that “EPA could not determine how this exception would be implemented consistent with CWA [sections] 303 and 502 and their implementing regulations.” Because of this, the Department elects to remove the phrase that was inserted during the 2013 triennial review.

EPA Comment/Recommendation: As described in the EPA's October 31, 2016 action, we did not act on this phrase for the reason described in our TSD and here in ADEQ's justification. The EPA supports ADEQ's proposal to strike this phrase.
- Revision:** Reg. 2.105: Insert “temporary” before “modification.”

Justification: Water quality standards modifications are temporary under an EIP. This language clarifies that.
- EPA Comment/Recommendation:** The insertion of “temporary” provides clarity for this authorizing provision. The EPA recognizes that the statutory language for Environmental Improvement Projects (EIP) held in Appendix B cannot be modified by the Arkansas Pollution Control & Ecology Commission (Commission) but recommends

that all future submissions and supporting documents clearly identify the term sought for an EIP. Without this specificity, an EIP may be considered incomplete per 40 CFR 131.6. See additional comments on Revision: Reg. 2.309 – Water Quality Standards Temporary Variance regarding EIPs.

4. **Revision:** Reg. 2.106 – All Flows: Strike “All Flows - Takes into account all flows and data collected throughout the year, including elevated flows due to rainfall events.”
Justification: EPA disapproved this language and it must revert to “Storm Flows”.

EPA Comment/Recommendation: As stated in our January 24, 2008 action and described in detail in our TSD, the EPA took no action on the definition in Reg. 2.106 of “All Flows.” However, in that same action, the EPA disapproved the associated revised heading title of "All Flows Values" and associated text revision (from "storm-flow" to "all flows") in Reg. 2.503 (see response to revisions to Reg. 2.503 below). The EPA supports ADEQ’s deletion of this definition.

5. **Revision:** Reg. 2.106 – Effluent: Insert definition of “Effluent.”
Justification: “Effluent” is used several times within the regulation but is undefined. This definition is from Regulation No. 6.

EPA Comment/Recommendation: The EPA supports the inclusion of this definition as it will add clarity to subsequent provisions.

6. **Revision:** Reg. 2.106 – Storm Flows: Insert “Storm flows: Takes into account all flows and data collected throughout the year, including elevated flows due to rainfall events.”
Justification: EPA disapproved “All Flows” and it reverts back to “Storm Flows”.

EPA Comment/Recommendation: See the response to Reg. 2.503 – Turbidity below.

CHAPTER 2: ANTIDegradation POLICY

7. **EPA Comment/Recommendation:** The EPA has provided comments and recommendations on initial and subsequent drafts of the state’s Antidegradation Implementation Methodology (AIM). See **Attachment 1**. State antidegradation policy and implementation procedures must be consistent with the components detailed in 40 CFR 131.12. The functional relationship between the state’s standards/antidegradation policy and its implementation should be clear if the AIM is not included in either the water quality standards or the state’s Continuing Planning Process (CPP) document consistent with 40 CFR 130.5(b)(6).

CHAPTER 3: WATERBODY USES

Regs. 2.302 – 2.311

1. **Reg. 2.302 Designated Uses**

EPA Comment/Recommendation: For the purpose of improving transparency with the public, it would be helpful if ADEQ would consider providing a better link between designated uses listed here and the parameters used to evaluate their support. See general comment provided for Chapter 5 below.

2. **Reg. 2.308 Site Specific Criteria**

EPA Comment/Recommendation: Part (A)(2) indicates that site specific numerical values may be established based on “304(a) Guidance modified to reflect site conditions (i.e., Water Effects Ratio);” Please note that the Biotic Ligand Model (BLM) has been the EPA’s recommended approach for developing site-specific criteria for copper since 2007. This use of this approach is currently in development for various other metals as well. While the EPA will consider criteria based on a water effect ratio (WER), we will use the EPA’s *Draft Technical Support Document: Recommended Estimates for Missing Water Quality Parameters for Biotic Ligand Model* to run a BLM if it is not otherwise provided. The EPA will defer to the more protective criteria based on either the WER or BLM approach.

Although WERs can be conducted for parameters other than metals, the EPA has found that WER studies for contaminants like ammonia or cyanide have either resulted in a WER of approximately “1” or could not be successfully completed due to analytical issues. This may be the case for other §304(a) contaminants. The EPA no longer recommends use of WERs for aluminum given the difficulty in keeping it dissolved in solution at the level that will generate a LC50 for a WER study. Also, we have noted that Regulation 2 does not include aquatic life criteria for aluminum. The EPA has also commented on the use of the EPA’s †304(a) criteria recommendations in the development of WERs for parameters other than metals in response to recent proposed updates for Arkansas’s CPP.

3. **Revision: Reg. 2.309 – Water Quality Standards Temporary Variance**

This provision was amended as such:

~~A temporary variance to the water quality standards may be allowed for an existing permitted discharge facility. The variance will be for specified constituents and shall be no longer than a three year period. A water quality standards temporary variance shall be developed in accordance with and meet the requirements of 40 C.F.R. §131.14 and must be approved by the Arkansas Pollution Control and Ecology Commission and the United States Environmental Protection Agency. A variance will be considered when it is determined that a standard, including designated use, can ultimately be attained or when preliminary evidence indicates that a site specific amendment of the standards may be appropriate. A variance may be granted only to the applicant and will not apply to other discharges into the specified waterbody.~~

Justification: Simply referencing 40 C.F.R. § 131.14 eliminates confusion and clarifies the requirements of a WQS temporary variance.

EPA Comment/Recommendation: The EPA supports the ADEQ's proposed revisions updating Reg. 2.309 referencing 40 CFR 131.14 regarding temporary variance. Although states are not required to include an authorizing provision for variances in their water quality standards, such provisions can provide clarity and direction for the public/regulated community. The use of variances as defined in 40 CFR 131.14 and associated guidance could be a useful tool to be utilized as an alternative to permanent site-specific criteria modification. A variance could be particularly useful in place of an EIP (Reg. 2.105, Appendix B) given that the limiting factor that is the three-year restriction for that type of project.

CHAPTER 4: GENERAL STANDARDS

Regs. 2.401 – 2.410

4. **EPA General Comment on Chapter 4:** We presume that each of the general standards provisions in this chapter apply to the protection of all uses in all waters of the state. As such, we recommend that the opening provision to Chapter 4 clarify that, with the exception of Biological Integrity, each of the following general standards provisions apply to all applicable uses in all waters of the state. This will provide added transparency as to the affected uses in those cases where impairments are identified for these general parameters.
5. **Revision:** Reg. 2.404: Amended as follows:

Reg-Rule 2.404 Mixing Zones~~RESERVED~~

~~Where mixing zones are allowed, the effects of wastes on the receiving stream shall be determined after the wastes have been thoroughly mixed with the mixing zone volume. Outfall structures should be designed to minimize the extent of mixing zones to ensure rapid and complete mixing.~~

~~For aquatic life toxic substances in larger streams (those with Q7-10 flows equal to or greater than 100 cfs), the zone of mixing shall not exceed 1/4 of the cross-sectional area and/or critical flow volume of the stream. The remaining 3/4 of the stream shall be maintained as a zone of passage for swimming and drifting organisms, and shall remain of such quality that stream ecosystems are not significantly affected. In the smaller streams (Q7-10 flows less than 100 cfs) because of varying local physical and chemical conditions and biological phenomena, a site-specific determination shall be made on the percentage of river width necessary to allow passage of critical free-swimming and drifting organisms so that negligible or no effects are produced on their populations. As a guideline, no more than 2/3 of the cross-sectional area and/or critical flow volume of smaller streams should be devoted to mixing zones thus leaving at least 1/3 of the cross-sectional area free as a zone of passage.~~

~~4-2~~

~~Mixing zones are not allowed for the parameters of bacteria or oil and grease, or where the background flow is less than the critical flow or where the background concentration of a waste parameter exceeds the specific criteria for that waste parameter. In lakes and reservoirs the size of mixing zones shall be defined by the Department Division on an individual basis, and the area shall be kept at a minimum.~~

~~Mixing zones shall not prevent the free passage of fish or significantly affect aquatic ecosystems.~~

~~A mixing zone shall not include any domestic water supply intake.~~

Justification: None provided

EPA Comment/Recommendation: The federal regulation at 40 CFR 131.13 indicates that states “may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances.” We interpret any such discussion of mixing zones as discretionary policy information. As such, the above mixing zone provision may be removed without further review by the EPA. However, the EPA recommends that this and similar water quality implementation policy provisions be included in the state of Arkansas’s *Rule 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)*.

6. **Revision:** Reg. 2.409: Amended as follows:

~~Discharges shall not be allowed into any waterbody which, after consideration of the zone of initial dilution, the mixing zone, and critical flow conditions, will~~ Toxic substances that may cause toxicity to human, animal, plant, or aquatic biota or interfere with normal propagation, growth, and survival of aquatic biota shall not be allowed into any waterbody.

Justification: None provided.

EPA Comment/Recommendation: This provision maintains the prohibition on discharges of toxic substances that may impact aquatic biota, but removes explicit statement requiring consideration of zone of initial dilution, mixing zone, or critical flow conditions. As noted in 40 CFR 131.13, states “may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flow and variances.” We interpret any such discussion of the above considerations as discretionary policy information. As such, the above information with respect to zone of initial dilution, mixing zone and critical flow conditions may be removed without further review by the EPA. However, the EPA recommends that this and similar water quality implementation policy provisions be included in the state of Arkansas’s *Rule 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)*.

However, the new sentence in this provision indicates that toxic substances that *may* cause toxicity are not allowed in the water. This suggests that any detection of any of these substances may cause a violation. This could lead to the interpretation that no dischargers can have these components in their effluent discharge because that would lead to detectible results which would be a violation. See comment on similar provision in Reg. 2.508 below.

7. **Revision** Reg. 2.410: Insert a comma after “grease,” insert a comma after “globules,” strike “or,” insert a comma after “residue,” insert a semicolon after “surface,” strike “or,” insert a semicolon after “waterbody.”

Justification: Created a list to correct grammar.

EPA Comment: The EPA recommends replacing the term “associated biota” with “aquatic life” as it has previously been defined, or otherwise define the term “associated biota”.

CHAPTER 5: SPECIFIC STANDARDS

Regs. 2.501 – 2.512

8. EPA General Comments on Chapter 5:

A. For purposes of providing greater transparency to the public, ADEQ may consider providing a clearer link between the parameters described in this chapter and those uses listed in Reg. 2.302, including:

- i. 2.502 Temperature (e.g. criteria listed by waterbody type, could also include designated use?)
- ii. 2.503 Turbidity
- iii. 2.504 pH
- iv. 2.506 Radioactivity
- v. 2.508 Toxic Substances (implied aquatic life use, are there other uses or specific tiers of aquatic life use to which this applies?)
- vi. 2.510 Oil and Grease (implied aquatic life use, are there other uses or specific tiers of aquatic life use to which this applies?)
- vii. 2.511 (A) Site Specific Mineral Quality Criteria

B. The applicable duration and/or frequency for the criteria for several parameters within this section have been removed or are not described. Including this information allows for greater transparency and minimizes variations in interpretation. Such information is also a critical part of any criterion as it may define, change, or establish the level of protection to be applied in attainment decisions, thereby affecting existing standards implemented under section 303(c) of the Act. For example:

- i. 2.502 Temperature (duration and frequency)
- ii. 2.504 pH (duration and frequency)
- iii. 2.505 Dissolved oxygen (frequency)
- iv. 2.508 Toxic substances (duration and frequency)
- v. 2.511 (A) Site Specific Mineral Quality Criteria (duration and frequency)

See additional EPA comments below on specific parameters.

9. **Revision:** Reg. 2.502: First paragraph regarding temperature criteria implementation removed as follows:

~~For purposes of determining effluent limits, Heat shall not be added to any waterbody in excess of the amount that will elevate the natural temperature, outside the mixing zone, by~~

~~more than 5°F (2.8°C) based upon the monthly average of the maximum daily temperatures measured at mid depth or three feet (whichever is less) in streams, lakes, or reservoirs.~~

Justification: None provided.

EPA Comment/Recommendation: The EPA supports the deletion of the phrase “measured at mid-depth or three feet (whichever is less)”. See the EPA’s response to ADEQ’s removal of “1.0 meter depth” language under Rule 2.502 below. However, consistent with the EPA’s 4-part test for determining new or revised water quality standards (see FAQ #4 at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>), the remaining deletions have the effect of revising applicable water quality standard by removing provisions identifying the magnitude (variability above background) and duration (monthly average of maximum daily temperatures) of criteria necessary to support a designated use. To support these deletions, the EPA would need as part of the state must submit supporting justification for why deleting these provisions are scientifically defensible and protective of the designated use in order for the EPA to approve them consistent with 40 CFR 131.5.

10. **Revision:** Reg. 2.502: Strike “(applicable at 1.0 meter depth).”

Justification: This language was not approved by EPA in a 2016 Technical Support Document and is therefore not effective for Clean Water Act purposes and should be removed. This addition was proposed in the previous triennial review to clarify assessment for lakes. This language is now contained in the Assessment Methodology for the 305(b) report.

EPA Comment/Recommendation: In its October 31, 2016 action, the EPA did not act on the “applicable at 1.0-meter depth” language as noted in ADEQ’s justification, the EPA took no action because the phrase implies that criteria for a specific parameters would only apply at 1.0-meter depth. Although likely intended as directing assessment, this limitation means that a criterion would not apply at other depths. The EPA has long held the position that water quality criteria apply throughout the water entire column. The EPA supports the modification here and in subsequent provisions that refer to the 1.0-meter depth limitation.

11. **Revision:** Reg. 2.503: First paragraph amended as follows:

“There shall be no distinctly visible increase in turbidity ~~of receiving in~~ waters of the state attributable to ~~discharges or in-stream~~ anthropogenic activities.”

Justification: None provided.

EPA Comment/Recommendation: The revised language generalizes but does not change the meaning of the statement. The EPA supports this change.

12. **Revision:** Reg. 2.503: Strike “all” and replace with “storm” in the last sentence of the first paragraph and in the table.

Justification: The revision from “storm” to “all” flows was disapproved by the EPA in 2008 and upheld after some discussion in the 2016 Technical Support Document. As a result, the language must revert to original.

EPA Comment/Recommendation: The proposed revisions to the opening sentence in Reg. 2.503 do not alter the meaning of the sentence and are acceptable.

As part of the Commission's 2007 triennial "Phase II" revisions, the heading "Storm-Flow Values" was replaced with a new heading titled "All Flows Values", the term "storm flows" in the text of Regulation 2.503 was revised to read "all flows" and a new definition in Regulation 2.106 for "All Flows." The EPA disapproved these revisions because they modified the application of the less stringent turbidity criteria in a way that is inconsistent with the original intent of deriving storm flow criteria. Using this approach may also result in the potential misidentification of a water in the state's Integrated Water Quality Monitoring Assessment Report (CWA §305(b)/303(d) integrated report) as supporting its applicable fisheries designated use when it may actually be impaired due to turbidity as detailed in our January 28, 2008 action and supporting Record of Decision (ROD). Reverting to the previously approved column heading "Storm-Flow Values" without addressing this underlying problem could potentially be seen as simply renaming the same problem making it difficult for the EPA to approve these revisions.

The new definition in Reg. 2.106 of "*Storm flows: Takes into account all flows and data collected throughout the year, including elevated flows due to rainfall events*" provides some context to how storm flow turbidity criteria are presently assessed. However, it remains overly expansive (i.e. still references "all flows"), and does not provide a definitive criterion, or criteria, by which storm flows are differentiated from base flows. A clear definition of storm flows is important in that it allows the assessor to make a sound judgment as to which criterion should apply under a given flow condition. At present, the state's assessment methodology for turbidity provides two approaches: one for baseflow, in which all turbidity data collected between May and October are applied against baseflow criteria, and one for storm flow, in which all turbidity data collected under any flow scenario across all seasons are applied against storm flow criteria. The former approach assumes that reduced flows occur most frequently during the summer and early fall months. It is questionable whether this would be appropriate every year, particularly during wet years when stormwater turbidity measurements may be compared to baseflow turbidity criteria, thereby raising the possibility of unnecessarily identifying a higher number of exceedances. Alternatively, the latter approach appears to fall back to assessing turbidity under all flows, as opposed to storm flows only, thereby discounting the original intent of the storm flow criteria to evaluate turbidity increases after storm events. As noted in the EPA's 2008 ROD, storm flow criteria were based on a 90th percentile of historic turbidity data in each ecoregion, ostensibly representing turbidity conditions under high (or relatively high) flow conditions, likely storm flow related, in which turbidity becomes more elevated. Assessing year-round turbidity data against the storm flow criteria, irrespective of flow condition, potentially biases that assessment if there are a large number of baseflow turbidity measurements in the dataset, thereby reducing the potential of finding >25% of samples exceeding the stormflow criteria. When using a binomial approach in assessments, every measurement is important, whether under baseflow or storm flow conditions and to apply an inappropriate criterion to just a few turbidity measurements can lead to significant decision error. The above issues point to the need for a clear definition of both baseflows and storm flows in the

water quality standards and to apply the criteria to turbidity measurements based on field-observed flow conditions.

The EPA understands that part of the issue with assessing storm flow-based criteria is the lack of flow data available at the time turbidity measurements are made, making the judgment of which criteria to apply more onerous. As a possible stopgap, in lieu of empirical flow measurement during every sampling event, the EPA recommends that ADEQ consider a flow estimation technique, such as the use of flow severity guidelines (**Attachment 2**), that allows for the field identification of flow conditions that could be used by assessors to more appropriately apply the dichotomous flow-based criteria (this approach is obviously most appropriate for use in rivers and streams, but could also be applied to tributaries of lakes and reservoirs for the same purpose). While the use of such estimation techniques may be subjective among different observers and may require some degree of calibration among field staff prior to widespread use, the resulting information would perhaps provide a more accurate assessment of actual flow conditions as compared to the presently broad, and possibly biased, assumptions about the seasonality of flow and applicability of criteria. Upon settling on a particular set of flow observation categories and the appropriate cutoffs among these categories, the definitions of baseflow and stormflow should be incorporated into the water quality standards under Reg. 2.106 based on ADEQ's evaluation of which flow categories best represent baseflow versus stormflow.

The comments outlined above are intended to further the discussion between the EPA and the ADEQ on this topic and to gain better insights into how the ADEQ's assessment approach evolved from the original derivation of these criteria. It is important that the ADEQ provide supporting information to further clarify how the Department's assessment approach applies baseflow and storm flow turbidity criteria and explain why this approach is appropriate to support the proposed revised heading title and associated definition.

13. **Revision:** Reg. 2.503: Strike "(applicable at 1.0 meter depth)" within the table.
Justification: This language was not approved by EPA in a 2016 Technical Support Document and is therefore not effective for Clean Water Act purposes and should be removed. This addition was proposed in the previous triennial review to clarify assessment for lakes. This language is now contained in the Assessment Methodology for the 305(b) report.

EPA Comment/Recommendation: See comments for Reg. 2.502 above. The EPA supports this revision.

14. **Revision:** Reg. 2.504: Strike "For lakes, the standards are applicable at 1.0 meter depth."
Justification: This language was not approved by EPA in a 2016 Technical Support Document and is therefore not effective for Clean Water Act purposes and should be removed. This addition was proposed in the previous triennial review to clarify assessment for lakes. This language is now contained in the Assessment Methodology for the 305(b) report.

EPA Comment/Recommendation: See comments for Reg. 2.502 above. The EPA supports this revision.

15. **Revision:** Reg. 2.504: Second paragraph was removed as follows:

~~“As a result of waste discharges, the pH of water in streams or lakes must not fluctuate in excess of 1.0 standard unit over a period of 24 hours.”~~

Justification: None provided.

EPA Comment/Recommendation: Consistent with EPA’s 4-part test for determining new or revised water quality standards (see FAQ #4 at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>), these deletions have the effect of revising applicable water quality standards by removing provisions identifying the magnitude (variability of pH no greater than 1 standard unit) and duration (24 hours) of criteria necessary to support a designated use. To support these deletions, the state must submit supporting justification for why deleting these provisions are scientifically defensible and protective of the designated use in order for the EPA to approve them consistent with 40 CFR 131.5.

16. **Revision:** Reg. 2.505: Multiple paragraphs at end of “Rivers and Streams” section were removed as follows:

~~“For purposes of determining effluent discharge limits, the following conditions shall apply:~~

~~(A) The primary season dissolved oxygen standard is to be met at a water temperature of 22°C (71.5°F) and at the minimum stream flow for that season. At water temperatures of 10°C (50°F), the dissolved oxygen standard criteria is 6.5 mg/L.~~

~~(B) During March, April and May, when background stream flows are 15 cfs or higher, the dissolved oxygen standard is 6.5 mg/L in all areas except the Delta Ecoregion, where the primary season dissolved oxygen standard criteria will remain at 5 mg/L.~~

~~(C) The critical season dissolved oxygen standard is to be met at maximum allowable water temperatures and at Q7-10 flows. However, when water temperatures exceed 22°C (71.6°F), a 1 mg/L diurnal depression will be allowed below the applicable critical standard criteria for no more than 8 hours during any 24-hour period.”~~

Justification: None provided.

EPA Comment/Recommendation: Consistent with the EPA’s 4-part test for determining new or revised water quality standards (see FAQ #4 at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>), these deletions have the effect of revising applicable water quality standards by removing provisions identifying an alternative criterion magnitude under varying temperature and/or flow conditions (identifies 6.5 mg/L as a criterion for determining limits, which was not otherwise listed in the preceding criteria table), as well as maximum allowable magnitude of diurnal DO depression (no more than 1 mg/L below applicable criteria)

over a given duration (no more than 8 hours over 24 hours) necessary to support a designated use. To support these deletions, the state must submit supporting justification for why deleting these provisions are scientifically defensible and protective of the designated use in order for the EPA to approve them consistent with 40 CFR 131.5.

17. **Revision:** Reg. 2.505: Two paragraphs at end of “Lakes and Reservoirs” section were removed as follows:

~~“Effluent limits for oxygen demanding discharges into impounded waters are promulgated in Arkansas Pollution Control and Ecology Commission Regulation Rule No. 6, Regulations Rules for State Administration of the National Pollutant Discharge Elimination System (NPDES).~~

~~However, the Commission may, after full satisfaction of the intergovernmental coordination and public participation provisions of the State of Arkansas Continuing Planning Process, establish alternative limits for dissolved oxygen in lakes and reservoirs where studies and other relevant information can demonstrate that predominant ecosystem conditions may be more accurately reflected by such alternate limits; provided that these limits shall be compatible with all designated beneficial uses of named lakes and reservoirs.”~~

Justification: None provided.

EPA Comment/Recommendation: 40 CFR 131.13 indicates that states “may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances.” The above language constitutes agency policy with respect to calculation of alternate permit limits where it can be demonstrated that this is appropriate. Such language does not constitute a water quality standard. The EPA supports this change. However, the EPA recommends that this and similar water quality implementation policy provisions be included in the state of Arkansas’s *Rule 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)*.

18. **Revision:** Reg. 2.505: Strike “applicable at 1.0 meter depth.”

Justification: This language was not approved by EPA in a 2016 Technical Support Document and is therefore not effective for Clean Water Act purposes and should be removed. This addition was proposed in the previous triennial review to clarify assessment for lakes. This language is now contained in the Assessment Methodology for the 305(b) report.

EPA Comment/Recommendation: See comments for Reg. 2.502 above. The EPA supports this revision.

19. **Revision:** Reg. 2.507: Insert “Secondary contact use is assumed in all watersheds” in first paragraph.

Justification: Secondary contact should still be protected throughout the year if primary contact use is not attainable on waterbody for any reason.

EPA Comment/Recommendation: It's not clear from the context when read in its entirety if this provision means that secondary contact only applies to all watersheds < 10 mi², or if secondary contact will apply to all watersheds regardless of size? Please explain.

20. **Revision:** Reg. 2.507: The last sentence of the first paragraph was removed as follows:
~~"No mixing zones are allowed for discharges of bacteria."~~

Justification: None provided.

EPA Comment/Recommendation: See comments regarding implementation of water quality standards in mixing zones for Reg. 2.404 above. The EPA supports this revision.

21. **Revision:** Reg. 2.507: Insert "or fecal coliform" after "E. coli" in second paragraph.

Justification: This addition clarifies that the individual sample language applies to either *E. coli* or fecal coliform data.

EPA Comment/Recommendation: With regard to Recreational Water Quality Criteria (RWQC), the ADEQ has long used the indicator fecal coliform and associated criteria for the protection of primary contact use. The EPA has discouraged the use of total and fecal coliforms as indicators of fecal contamination since 1986 because they are not reliable indicators of illness to swimmers. As far back as 1986, the EPA clearly stated the Agency's expectations for states to transition to indicators that are superior to fecal coliforms. In 1986 and again in 2012, the EPA, pursuant to CWA § 304(a), issued recommended RWQC to protect the public from exposure to harmful levels of pathogens while participating in primary contact recreation activities such as swimming. The EPA recommended RWQC are based on two bacterial indicators of fecal contamination - *E. coli* or enterococci in fresh waters, and enterococci in marine waters. As a result, the EPA recommends that the proposed revision be changed to "the below listed applicable criteria for *E. coli* shall not be exceeded..." and delete fecal coliform as an indicator from both the second paragraph the table of applicable criteria. It will be difficult for the EPA to approve a modification of a provision that includes such outdated indicator and criteria as protective of contact designated uses.

22. **Revision:** Reg. 2.507: Insert "individual" in the second paragraph before "samples."

Justification: Insertion of this language clarifies that the 25% exceedance rate and the eight (8) sample minimum applies only to Individual Sample Criteria, not the geometric mean.

EPA Comment/Recommendation: The EPA supports this revision as it relates to the indicator *E. coli*.

23. **Revision:** Reg. 2.507: Strike "2" as a footnote marker under the "Primary Contact" and "Secondary Contact" headings of the table for ERW, ESW, NSW, Reservoirs, Lakes.

Justification: The associated footnote pertaining to 1.0-meter depth was not approved by EPA and should be removed. This addition was proposed in the previous triennial review

to clarify assessment for lakes. This language is now contained in the Assessment Methodology for the 305(b) report.

EPA Comment/Recommendation: See comments for Reg. 2.502 above. The EPA supports this revision.

24. **Revision:** Reg. 2.507: Strike the footnote “Applicable at 1.0-meter depth in Reservoirs and Lakes.” Insert “(RESERVED).”

Justification: This language was not approved by EPA in a 2016 Technical Support Document and is therefore not effective for Clean Water Act purposes and should be removed. This addition was proposed in the previous triennial review to clarify assessment for lakes. This language is now contained in the Assessment Methodology for the 305(b) report.

EPA Comment/Recommendation: See comments for Reg. 2.502 above. The EPA supports this revision.

25. **Revision:** Reg. 2.507: Footnote 5 – Strike “October 1 to April 30”. Replace with “Year-round.”

Justification: This clarifies the intent that Secondary Contact Recreation is year-round. The Reg. 2.302 definition of Secondary Contact Recreation does not limit the use to only part of the year.

EPA Comment/Recommendation: Recommend that the primary and secondary contact timeframes be listed in 2.106 (Definitions) or 2.302 (Designated Uses).

26. **Revision:** Reg. 2.508: The first sentence of the first paragraph was amended as follows: “Toxic substances ~~shall not be present in receiving waters, after mixing, in such quantities as to be toxic~~ that may cause toxicity to human, animal, plant or aquatic life or to interfere with the normal propagation, growth and survival of the indigenous aquatic biota shall not be allowed into any waterbody.”

Justification: None provided.

EPA Comment/Recommendation: The removal of the phrase “in such quantities” from this provision may result in a more sweeping interpretation than is perhaps expected. The new sentence in this provision indicates that toxic substances that may cause toxicity are not allowed in the water. This means that any detection of these substances may cause a violation. This could lead to the interpretation that no discharger can have these components in their effluent because that would lead to detectible results which would be a violation.

27. **Revision:** Reg. 2.508: The second through fifth sentences of the first paragraph were removed as follows: “~~Acute toxicity standards apply outside the zone of initial dilution. Within the zone of initial dilution acute toxicity standards may be exceeded but acute toxicity may not occur. Chronic toxicity and chronic numeric toxicity standards apply at, or beyond, the edge of the mixing zone. Permitting of all toxic substances shall be in~~

accordance with the toxic implementation strategy found in the State of Arkansas Continuing Planning Process.”

Justification: None provided

EPA Comment/Recommendation: See comments regarding inclusion of implementation language in water quality standards, including its relationship to mixing zones, for Reg. 2.404 above. The EPA supports this revision.

28. Reg. 2.508 Toxic Substances:

EPA Comment/Recommendation: 40 CFR § 131.20(a) was amended as part of the EPA's 2015 water quality standards regulation revision. The amended regulation requires any state that chooses not to adopt new or revised criteria for any parameters for which the EPA has published new or updated criteria recommendations under CWA § 304(a) to explain its decision when reporting the results of its triennial review to the EPA. The goal of this revised provision is to ensure public transparency about state water quality standards decisions. The EPA is including this item as a reminder to include this information, if applicable, in any triennial review submittal to the EPA.

The EPA's “Supplemental Information for Water Quality Standards Regulatory Revisions Final Rule: New or Updated CWA Section 304(a) Criteria Recommendations Published since May 30, 2000” (2015) provides a list of the new or updated CWA section 304(a) criteria recommendations published between May 30, 2000 and the publication of the EPA's 2015 water quality standards regulation revision. Please note that the more recently published national 304(a) recommended aquatic life criteria for cadmium (2016), selenium (2016 – Freshwater), aluminum (2018-Freshwater) and cyanotoxins (2019-Freshwater) are not listed in this table.

ADEQ should evaluate these criteria recommendations and provide the required explanation for any updated federal criteria not adopted as part of this triennial review. There is no required format in which to provide these explanations. However, two examples have been provided (**Attachment 3**) from another Region 6 state that may be helpful as an example.

29. Reg 2.508 Toxic Substances - footnote:

EPA Comment/Recommendation: A footnote provided for the “Dissolved Metals” table indicates that “These values may be adjusted by a site-specific Water Effects Ratio (WER)”. Please note that the Biotic Ligand Model (BLM) has been the EPA's recommended approach for developing site-specific criteria for copper since 2007. This approach is currently in development for various other metals as well. While the EPA will consider criteria based on a water effect ratio (WER), we will use the EPA's missing parameters guidance to run a BLM if it is not otherwise provided. The EPA will defer to the more protective criteria based on either the WER or BLM approach.

As noted in our previous comment on Reg. 2.308, the EPA no longer recommends use of WERs for aluminum given the difficulty in keeping it dissolved in solution at the level that

will generate a LC50 for a WER study. As noted previously, Reg. 2 does not include aquatic life criteria for aluminum.

30. **EPA Comment on Reg. 2.509(A):** This rule states: “Materials stimulating algal growth shall not be present in concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody.” Does the phrase “any designated use of the waterbody” mean that nutrients can be used to determine support for any of the listed designated uses in Rule 2.302?
31. **Revision:** Reg. 2.509(B): The last two paragraphs and table were removed from this section as follows: ~~“All point source discharges into the watershed of waters officially listed on Arkansas’s impaired waterbody list (303(d)) with phosphorus as the major cause shall have monthly average discharge permit limits no greater than those listed below. Additionally, waters in nutrient surplus watersheds as determined by Act 1061 of 2003 Regular Session of the Arkansas 84th General Assembly as set forth in Ark. Code Ann. § 15-20-1104, and subsequently designated nutrient surplus watersheds may be included under this Reg. Rule if point source discharges are shown to provide a significant phosphorus contribution to waters within the listed nutrient surplus watersheds.”~~

<u>Facility Design Flow — mgd</u>	<u>Total Phosphorus discharge limit — mg/L</u>
= or > 15	Case by case
3 to < 15	1.0
1 to < 3	2.0
0.5 to < 1.0	5.0
< 0.5	Case by Case

~~For discharges from point sources which are greater than 15 mgd, reduction of phosphorus below 1 mg/L may be required based on the magnitude of the phosphorus load (mass) and the type of downstream waterbodies (e.g., reservoirs, Extraordinary Resource Waters). Additionally, any limits listed above may be further reduced if it is determined that these values are causing impairments to special waters such as domestic water supplies, lakes or reservoirs, or Extraordinary Resource Waters.~~

Justification: None provided.

EPA Comment/Recommendation: The deleted language describes permit limits for total phosphorus that are not water quality criteria, and do not appear to directly implement nutrient-related criteria (chlorophyll a and Secchi depth) found in the water quality standards. These are design flow-based limits implemented when total phosphorus is identified as a cause of impairment in waters to which a point source discharge occurs. The EPA supports this revision. However, please note that the state’s CPP refers to this provision. Is this being incorporated into Rule 6? If so, the CPP reference needs to be updated.

32. **Revision:** Reg. 2.510: Insert a comma after “grease”, strike “receiving” before “waters” and insert “of the state” after “waters”, insert a comma after “globules,” strike “or,” insert

a comma after “residue,” strike a comma after “surface,” insert a semicolon after “surface,” strike “or,” insert a semicolon after “watercourses.”

Justification: Created a list to correct grammar.

EPA Comment/Recommendation: Specification of applicability of oil and grease water quality standards to all waters of the state, rather than only receiving waters, is acceptable.

33. **Revision:** Reg. 2.510: Strike following sentence: “~~No mixing zones are allowed for discharges of oil and grease.~~”

Justification: None provided.

EPA Comment/Recommendation: See comments regarding inclusion of implementation language in water quality standards, including as it may relate to mixing zones, for Reg. 2.404 above. The EPA supports this revision. As noted in our prior comment to Reg. 2.410, we recommend replacing the term “associated biota” with “aquatic life” or define the term “associated biota”.

34. **Reg. 2.511(A) Site Specific Mineral Quality Criteria:**

EPA Comment/Recommendation: In its 2007 triennial “Phase II” revisions, the Commission revised Reg. 2.511(A) adding and striking the following language (denoted by underline/strikeout text):

“Mineral quality shall not be altered by municipal, industrial, other waste discharges or instream activities so as to interfere with designated uses. The following limits apply to the streams indicated and represent the monthly average concentrations of chloride (Cl⁻), sulfate (SO₄²⁻) and total dissolved solids (TDS) ~~not to be exceeded in more than one (1) in ten (10) samples collected over a period of not less than 30 days or more than 360 days.~~”

As detailed in its January 24, 2008 action and supporting TSD, the EPA disapproved the striking of language referring to exceedance rates based on a lack of supporting documentation as required by 40 CFR 131.6 (b) and (f) and methods, including methods and analysis conducted that would allow the EPA to determine the adequacy and scientific basis for this revision. The EPA specified in that action that the previously approved language in Reg. 2 (April 23, 2004) remains in effect for CWA purposes. The ADEQ’s Assessment Methodology (2018) specifies that site-specific mineral criteria listed in Reg. 2.511(A) means that assessments must be based on a monthly average of site-specific values for chlorides, sulfates, and/or TDS not to be exceeded in more than one (1) in ten (10) samples collected over not less than 30 days or more than 360 days. Given that the EPA disapproved the removal of the language specified above, using the 2018 Assessment Methodology as currently written is inconsistent with Reg. 2.511(A) given that this language remains in effective for CWA purposes.

35. **Revision:** Reg. 2.511(A): Bayou Meto: Revise as follows:

Bayou Meto (Rocky Branch to Pulaski/Lonoke
county line ~~Bayou Two Prairie~~)

Bayou Meto (~~mouth to Bayou Two Prairie~~)
(Pulaski/Lonoke county line to mouth)

Justification:

- A 2007 3rd party rulemaking (minute order 04-41) states “modify the dissolved mineral standards for Bayou Meto from the point it crosses the Pulaski/Lonoke County line to the confluence with the Arkansas River as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 64 mg/l to 95 mg/l.”
- The October 26, 2007, 2007 version of Reg. 2 submitted to EPA for approval states “Bayou Meto (mouth to Bayou Two Prairie)”.
- EPA noted in an August 5, 2008 TSD that the reach description in the minute order and in Reg. 2 did not match. EPA’s August 5, 2008 TSD stated approval for “Bayou Meto (mouth to Bayou Two Prairie).”
- The 2013 triennial review attempted to clarify the original 3rd party rulemaking’s intended reach and revised the regulation to state “Bayou Meto (mouth to Pulaski/Lonoke county line).”
- EPA’s October 31, 2016 TSD made no statement of this revision (ie approve, disapprove, no action).
- Additionally, there are two sets of criteria noted in the reg for part of Bayou Meto.
- Therefore the 2016 clarification is once again being made in addition to clarification of the criteria applicable to the upper reach “Bayou Meto (Rocky Branch to Pulaski/Lonoke county line).”

EPA Comment/Recommendation: The proposed revisions are specific to “Bayou Meto to Polaski/Lonoke county line” and “Bayou Meto (Pulaski/Lonoke county line).” These revisions do not include Bayou Two Prairie. As a result, the EPA does not have any concerns with revising these descriptors in Reg. 2.511(A).

The two following entries that specify the exclusion of those portions of Bayou Two Prairie that have the ERW designated use and appear consistent with the EPA’s August 5, 2008 action disapproving site-specific chloride and sulfate criteria applicable to Bayou Two Prairie adjacent to the Smoke Hole Natural Area as inconsistent with 40 CFR § 131.12(a)(3). The ecoregion criteria of 48 mg/L and 37.3 mg/L for chloride continue to apply to the portion of Bayou Two Prairie adjacent to Smoke Hole Natural Area.

36. **Revision:** Reg. 2.511 (A): Close parentheses on “Bayou Two Prairie (Pulaski/Lonoke county line to.... Smoke Hole Natural Area)”

Justification: Punctuation correction.

EPA Comment/Recommendation: Please note the following additional corrections:

- A. Please strike “†” on all values for Poteau River from confluence of Unnamed trib to Scott County Road 59 and Unnamed trib from Tyson-Waldron Outfall 001 to confluence with the Poteau River. The listed criteria were approved by the EPA on June 2, 2020 and are now applicable for CWA purposes.

- B. Please update the sulfate criterion for Stennitt Creek from Brushy Creek to Spring River to reflect that approved by the EPA on June 3, 2020 (43mg/L). Similarly, please update the table in this provision to reflect those minerals criteria approved on the same date for Unnamed Tributary of Brushy Creek from Vulcan Construction Materials Outfall 001 to Brushy Creek and Brushy Creek from Unnamed Tributary to Stennitt Creek.
- C. Please strike “†” on all values for Town Branch from Point of Discharge of the Huntsville WWTP downstream to the confluence with Holman Creek and Holman Creek from the confluence with Town Branch downstream to the confluence with War Eagle Creek. The listed criteria were approved by the EPA on May 22, 2020 and are now applicable for CWA purposes.

37. **Revision:** Reg. 2.511(B): Amended the following sentence as follows: “The values listed in the table below are not intended ~~nor will these values~~ to be used by the ~~Department~~ Division to evaluate attainment of the water quality standards for assessment purposes.
Justification: None provided.

EPA Comment/Recommendation: In its August 31, 2016 action the EPA did not approve certain portions of Reg. 2.511(B) including the entire sentence referred to. Based on that action, this sentence is not, nor has it ever been, effective for CWA purposes. The EPA approved the criteria referred to as “values” as water quality standards pursuant to the CWA §303(c) and they are effective for CWA purposes. The criteria themselves were based on the significant work that the ADEQ did in the development of its Physical, Chemical, and Biological Characteristics of Least-Disturbed Streams in Arkansas’s Ecoregions, Vol. 2 and 2 (ADEQ, 1987). The stated purpose of these documents was to provide a sound scientific basis for the development, review, and adoption of water quality standards.

The EPA looks forward to continuing its work with ADEQ to implement its October 27, 2017 Mineral Criteria Development Strategy, including upcoming milestones of presenting proposed revised mineral criteria to the Mineral Stakeholder workgroup and presenting proposed multi-metric biological indices (IBI) and tiered aquatic life uses (TALU) for the Ouachita Mountain ecoregion and expanding this effort in other ecoregions. The EPA also considers the collaborative effort in the current NSTEPS project, as well as RARE project related to conductivity, to be promising.

38. **Revision:** Reg. 2.511(C): Strike “For lakes and reservoirs applicable at 1.0 meter depth.”
Justification: This language was not approved by EPA in a 2016 Technical Support Document and is therefore not effective for Clean Water Act purposes and should be removed. This addition was proposed in the previous triennial review to clarify assessment for lakes. This language is now contained in the Assessment Methodology for the 305(b) report.

EPA Comment/Recommendation: See comments for Reg. 2.502 above. The EPA supports this revision.

39. **Revision:** Reg. 2.512(D): Strike sentence as follows: “~~For permitted discharges, the daily maximum or seven-day average permit limit shall be calculated using the four-day average value described above as an instream value, after mixing and based on a season when fish early life stages are present and a season when fish early life stages are absent.~~”

Justification: None provided.

EPA Comment/Recommendation: This provision described the criteria (and their seasonality) being used as a basis for calculating permit limits but did not specifically describe how these calculations would be made, nor changed the protectiveness of the criteria. This provision is not a water quality standard. See comments regarding inclusion of implementation language in water quality standards for Reg. 2.404 above. The EPA supports this revision. However, the removal of the first sentence creates some uncertainty as to what pH and temperature are being used for: the determination of ammonia criteria for assessment as well as the derivation of permit limits? This should be clarified.

Also, the EPA requests more information about how the pH data are obtained. When was the last time data were collected to determine the ecoregion mean value?

APPENDIX A

40. **Revision:** Appendix A, throughout: The following footnotes were removed from the Site Specific Criteria Variations tables for each ecoregion:

“*Increase over natural temperatures may not be more than 2.8°C (5°F).

**At water temperatures ” 10°C or during March, April and May when stream flows are 15 cfs and greater, the primary season dissolved oxygen standard will be 6.5 mg/L. When water temperatures exceed 22°C, the critical season dissolved oxygen standard may be depressed by 1 mg/L for no more than 8 hours during a 24-hour period.”

Justification: None provided.

EPA Comment/Recommendation: For the deleted temperature provision: consistent with the EPA’s 4-part test for determining new or revised water quality standards (see FAQ #4 at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>), these deletions have the effect of revising applicable water quality standards by removing provisions identifying the magnitude (variability above background) of criteria necessary to support a designated use. To support these deletions, the EPA would need as part of the state’s submission a supporting justification for why deleting these provisions is scientifically defensible and protective of the designated use in order to approve them.

For the deleted DO provision: consistent with the EPA’s 4-part test for determining new or revised water quality standards (see FAQ #4 at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>), these deletions have the effect of revising applicable water quality standards by removing

provisions identifying an alternative criterion magnitude under varying temperature and/or flow conditions (identifies 6.5 mg/L as a criterion, which was not otherwise listed in the preceding criteria table in Rule 2.505), as well as maximum allowable magnitude of diurnal DO depression (no more than 1 mg/L below applicable criteria) over a given duration (no more than 8 hours over 24 hours) necessary to support a designated use. To support these deletions, the EPA would need as part of the state's submission a supporting justification for why deleting these provisions is scientifically defensible and protective of the designated use in order to approve them.

41. **Appendix A - Site Specific Designated Use Variations for Ozark Highlands Table**

EPA Comment/Recommendation: The footnote states “† Not applicable for clean water act purposes until approved by EPA.” Please note that the EPA approved the removal of the Domestic Water Supply Uses for both Holman Creek and Town Branch on May 22, 2020. This footnote, and the “†” symbols, can be removed from this table. In addition, the EPA approved the removal of Domestic Water Supply uses on June 3, 2020 for Unnamed Tributary of Brushy Creek from Vulcan Construction Materials Outfall 001 to Brushy Creek and Brushy Creek from Unnamed Tributary to Stennitt Creek. This could be reflected in the table above or below Stennitt Creek.

42. **Revision:** Appendix A-OH: Strike “all” and insert “storm” under the turbidity heading within the table.

Justification: The revision from “storm” to “all” flows was disapproved by EPA in 2008 and upheld after some discussion in the 2016 Technical Support Document. As a result, the language must revert to original.

EPA Comment/Recommendation: As noted in the response to Reg. 2.503 above, the EPA supports this revision.

43. **Revision:** Appendix A-OH: Strike the “†” footnote indicator from the Crooked Creek and White River entries under the Site-specific Criteria Variations Supported by Use Attainability Analysis heading.

Justification: This footnote is no longer valid for these entries as EPA has approved the site-specific criteria.

EPA Comment/Recommendation: The EPA supports this revision. Likewise, the “†” footnote indicator can also be removed from the Holman Creek and Town Branch entries. The listed criteria for these waters were approved by the EPA on May 22, 2020.

44. **Appendix A - Site Specific Criteria Variations for Ozark Highlands Table**

EPA Comment/Recommendation: In addition to TDS, please update to reflect the sulfate criterion for Stennitt Creek from Brushy Creek to Spring River that was approved by the EPA on June 3, 2020 (43 mg/L). Similarly, please update this table to reflect those new minerals criteria approved on the same date for Unnamed Tributary of Brushy Creek

from Vulcan Construction Materials Outfall 001 to Brushy Creek and Brushy Creek from Unnamed Tributary to Stennitt Creek.

45. **Revision:** Appendix A-BM: Strike “all” and insert “storm” in two places under the turbidity heading of within the table.
Justification: The revision from “storm” to “all” flows was disapproved by EPA in 2008 and upheld after some discussion in the 2016 Technical Support Document. As a result, the language must revert to original.

EPA Comment/Recommendation: As noted in the response to 2.503 above, the EPA supports this revision.

46. **Revision:** Appendix A-ARV: Strike “all” and insert “storm” under the turbidity heading of within the table.
Justification: The revision from “storm” to “all” flows was disapproved by EPA in 2008 and upheld after some discussion in the 2016 Technical Support Document. As a result, the language must revert to original.

EPA Comment/Recommendation: As noted in the response to Reg. 2.503 above, the EPA supports this revision.

47. **Appendix A-ARV:**

EPA Comment/Recommendation: Please strike the “†” footnote indicator from the Poteau River and Unnamed Tributary entries in the Site-specific Criteria Variations Supported by Use Attainability Analysis table. The associated footnote can be removed as well since all listed criteria have been approved by the EPA.

48. **Revision:** Appendix A-OM: Strike “all” and insert “storm” under the turbidity heading of within the table.
Justification: The revision from “storm” to “all” flows was disapproved by EPA in 2008 and upheld after some discussion in the 2016 Technical Support Document. As a result, the language must revert to original.

EPA Comment/Recommendation: As noted in the response to Reg. 2.503 above, the EPA supports this revision.

49. **Revision:** Appendix A-OM: Insert “*These temporary standards variations are effective for 160 months from EPA’s approval of the EIP.” as a footnote below the Temporary Variations Supported by EIP table.
Justification: This footnote clarifies the timeframe the referenced entries have a temporary variation.

EPA Comment/Recommendation: As stated in the EPA’s January 7, 2020 approval letter and as stated in the accompanying Technical Support Document, the temporary site-specific criteria are approved for a period of 12.3 years from the date of the EPA’s approval. This is consistent with the timeline confirmed by ADEQ in Sarah Clem’s letter November

30, 2018 letter responding to the Russell Nelson's October 18, 2018 inquiry regarding the duration of the HESI EIP project. The 12.3-year duration equates to 148 months.

50. **Appendix A-OM:**

EPA Comment/Recommendation: The footnote "Not applicable for clean water act purposes until approved by EPA" and all references to it in the Temporary Variations Supported by EIP table have been removed. The EPA supports this revision. In addition, we recommend that the temporary minerals criteria be reflected in Rule 2.511(A) as well.

51. **Revision:** Appendix A-GC: Strike "Unnamed tributary to Flat Creek from EDCC Outfall 001 d/s to confluence with unnamed tributary A to Flat Creek Chloride 23 mg/L, Sulfate 125 mg/L, TDS 475 mg/L, (GC-2, #37) †" and "Unnamed tributary A to Flat Creek from mouth of EDCC 001 ditch to confluence with Flat Creek, Chloride 16 mg/L, Sulfate 80 mg/L, TDS 315 mg/L, (GC-2, #38) †"
Justification: EPA disapproved these site-specific criteria revisions as per August 31, 2001 TSD.

EPA Comment/Recommendation: As described in ADEQ's justification, the EPA has disapproved these revisions related to EDCC. No comment is necessary.

52. **Revision:** Appendix A-GC: Strike the "†" after the entry "Red River from mouth of the Little River to the Arkansas/Louisiana state line, TDS 780 mg/L (GC-1, #55, 58)†"
Justification: In a March 6, 2018 Technical Support Document, EPA approved the site-specific criteria change on the Red River. As a result, this criterion is approved for Clean Water Act purposes and no longer necessitates the "†" notation.

EPA Comment/Recommendation: As described in ADEQ's justification, the EPA has approved these revisions. No further comment is necessary.

53. **Revision:** Appendix A-GC: Strike "†" footnote indicator at the end of the "Little River from Millwood Lake to the Red River..." entry.
Justification: EPA approved these site-specific criteria revisions per a May 16, 2016 TSD. As a result, these criteria are approved for Clean Water Act purposes and no longer necessitate the "†" notation.

EPA Comment/Recommendation: As described in ADEQ's justification, the EPA approved these revisions in its 2016 action and deletion of the footnote indicate is appropriate. No further comment is necessary.

54. **Revision:** Appendix A-GC: Insert "*These temporary standards variations are effective for 160 months from EPA's approval of the EIP." as a footnote below the Temporary Variations Supported by EIP table.
Justification: This footnote clarifies the timeframe the referenced entries have a temporary variation.

EPA Comment/Recommendation: The EPA’s approval letter and supporting TSD state that these temporary standards are approved for 12.3 years from the time of approval (January 7, 2020)), consistent with the timeframe referenced in a letter to Russell Nelson, EPA Region 6, from Sarah Clem, ADEQ, dated November 30, 2018. This equates to 148 months.

55. **EPA Comment on Appendix A-GC:** We recommend that temporary minerals criteria be reflected in Rule 2.511(A) as well.

56. **Revision:** Appendix A-GC: Strike “Variations Supported by Technical Adjustment Red River from the Arkansas/Oklahoma state line to the mouth of the Little River, sulfate 250 mg/L, TDS 940 mg/L (GC-1, #57)†
Red River from mouth of the Little River to the Arkansas/Louisiana state line, sulfate 225 mg/L (GC-1, #58)†”

Justification: In a June 6, 2016 Technical Support Document, EPA disapproved the site-specific criteria change on the Red River.

EPA Comment/Recommendation: As described in ADEQ’s justification, in its June 6, 2016 action, the EPA disapproved revisions for the upper Red River – Arkansas/Oklahoma state line to the mouth of the Little River. No further comment is necessary.

57. **Revision:** Appendix A-GC: Revise Plate GC-1 to remove #57 and #58

Justification: In a June 6, 2016 Technical Support Document, EPA disapproved the site-specific criteria change on the Red River.

EPA Comment/Recommendation: See prior comment. No further comment is necessary.

58. **Revision:** Appendix A-GC: Revise Plate GC-2 to remove duplicate #40 and add #41

Justification: According to text, #41 corresponds to Loutre Creek from Highway 15 S. to the confluence of Bayou de Loutre which has no domestic water supply use.

EPA Comment/Recommendation: See prior comment. No further comment is necessary.

59. **Appendix A-GC: Coffee Creek and Mossy Lake**

EPA Comment/Recommendation: The EPA and the ADEQ have discussed concerns related to removal of Gulf Coastal designated uses for Coffee Creek and Mossy Lake that was approved by the EPA in the early 1980s as it relates to the requirements in the federal regulation at 40 CFR 131.10 and 131.20(a). Given the regulatory requirements, in an effort to determine the appropriate uses for Coffee Creek and Mossy Lake, the EPA funded a use attainability analysis (UAA) in 2007 that was developed by Parsons Engineering and the University of Arkansas Ecological Engineering Group to determine if the “no aquatic life use” designation for Coffee Creek and Mossy Lake is appropriate. The Parsons UAA indicates Coffee Creek and Mossy Lake have the potential to support

the state's Gulf Coastal aquatic life use but that the Georgia-Pacific Crossett discharge effects both habitat and aquatic life in Coffee Creek and Mossy Lake. A subsequent UAA developed by AquAeTer Environmental Engineering in 2013 on behalf of Georgia-Pacific did not refute these findings but recommended the development of a seasonal Gulf Coastal aquatic life use.

The ADEQ appears to have considered the AquAeTer UAA recommendations and likely its own analysis and proposed a seasonal Gulf Coastal ecoregion aquatic life use for portions of Coffee Creek as part of its 2019 triennial revisions as required by 40 CFR 131.10 and 131.20(a). However, the ADEQ's initial proposed revisions were limited to the addition of a "...seasonal Gulf Coastal ecoregion aquatic life use, but its application was limited to the historic channel of Coffee Creek upstream of Georgia Pacific's Mossy Lake Treatment Unit from N33.057, W092.055 to N33.094, W092.04 and the remaining upstream portion of the historic channel from N33.112, W092.013 to N33.119, W091.995." In our October 31, 2019 letter, the EPA provided comments and recommendations regarding this proposed revision, noting that it did not include seasonal uses that would apply to the entirety of Coffee Creek and Mossy Lake or appropriate CWA Sec. 101(a)(2) uses that would apply to these waters during the remainder of the year. These initial comments also referred to the requirements found in the federal regulations.

As part of Arkansas's water quality standards revisions process, the ADEQ has since provided its proposed revisions to Reg. 2, now Rule 2, to the Governor's Office for review. Following that review, the ADEQ petitioned the Arkansas Pollution Control and Ecology Commission (Commission) to adopt the revisions proposed by the Water Quality Planning Branch. However, the proposed revisions to Rule 2 that were brought before the Commission during its July 29, 2020 hearing no longer included the previously proposed seasonal use for the portions of Coffee Creek referred to in the ADEQ's initial proposed revisions and did not include uses consistent with CWA Sec. 101(a)(2) or Rule 2.102 and 2.302 for the Coffee Creek or Mossy Lake. In response, the EPA again recommends that Commission adopt uses consistent with CWA Sec. 101(a)(2) and Arkansas's own Rule 2.102 for the entirety of Coffee Creek and Mossy Lake and again reiterates the CWA requirements and those in the federal regulations at 40 CFR 131.10 and 40 CFR 131.20(a). See the EPA's October 2019 comments in **Attachment 4**.

60. **Revision:** Appendix A-D: Insert "(Rocky Branch to Pulaski/Lonoke county line)" and strike "from Rocky Branch Creek to Bayou Two Prairie" in the first Bayou Meto entry under "Site-specific Criteria Variations Supported by Use Attainability Analysis" heading.

Justification:

- A 2007 3rd party rulemaking (minute order 04-41) states "modify the dissolved mineral standards for Bayou Meto from the point it crosses the Pulaski/Lonoke County line to the confluence with the Arkansas River as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 64 mg/l to 95 mg/l."
- The October 26, 2007, 2007 version of Reg. 2 submitted to EPA for approval states "Bayou Meto (mouth to Bayou Two Prairie)".

- EPA noted in an August 5, 2008 TSD that the reach description in the minute order and in Reg. 2 did not match. EPA's August 5, 2008 TSD stated approval for "Bayou Meto (mouth to Bayou Two Prairie)."
- The 2013 triennial review attempted to clarify the original 3rd party rulemaking's intended reach and revised the regulation to state "Bayou Meto (mouth to Pulaski/Lonoke county line)."
- EPA's October 31, 2016 TSD made no statement of this revision (ie approve, disapprove, no action).
- Additionally, there are two sets of criteria noted in the reg for part of Bayou Meto. Therefore the 2016 clarification is once again being made in addition to clarification of the criteria applicable to the upper reach "Bayou Meto (Rocky Branch to Pulaski/Lonoke county line)."

EPA Comment/Recommendation: As noted in our prior response on Reg. 2.511(A), the proposed revisions here are specific to "Bayou Meto to Polaski/Lonoke county line" and "Bayou Meto (Pulaski/Lonoke county line)." The EPA does not have any concerns with revising these descriptors in Appendix D (D-3, Map Insert 42).

61. **Revision:** Appendix A-D: Bayou DeView from mouth to AR Hwy 14 moved to different part of Site Specific Standards Criteria Variations table.

EPA Comment/Recommendation: This water should be removed from its original location (D-1. # 41) of the same table.

ATTACHMENT 1

ANTIDEGRADATION IMPLEMENTATION

**EPA COMMENTS AND REGOMMENDATION ON
ARKANSAS'S DRAFT
ANTIDEGRADATION IMPLEMENTATION METHODS
2020 EDITION**

**Proposed by
Arkansas Energy and Environment
Division of Environmental Quality
Office of Water Quality**

**U.S. EPA REGION 6
WATER DIVISION**

August 2020

DEFINITIONS

Alternatives Analysis: A structured evaluation of the practicability of less- and non-degrading alternatives to an activity likely to cause lowering of water quality.

EPA comment: *In previous comments, the EPA noted that the requirement found in 40 CFR 131.12(a)(2)(ii) refers to an evaluation of a “...range of practicable alternatives...”, rather than evaluating whether an alternative is practicable. This is important because this analysis should be comparing the different options that have already been determined to be practicable and that lessen or prevent degradation. Thus, the EPA again recommends structuring the alternatives analysis definition to compare different practicable options that prevent or lessen degradation.*

Baseline Water Quality (BWQ): The level of water quality that is used to establish the assimilative capacity within a waterbody. BWQ will be determined the first time that an analysis of significant degradation is done for authorization of a proposed new or expanded discharge is considered for authorization after {STARTING DATE}. For a new authorization, the BWQ shall be representative of the water quality at or immediately upstream from a proposed discharge. For an expanding discharge, the BWQ shall include the levels of pollutants already permitted to be discharged at maximum design flow. Once established, BWQ is a fixed quantity expressed as a concentration.

EPA comment: *Recommend replacing “the first time that an analysis of significant degradation is done” with “the first time a new or expanded discharge is considered.” The current language is problematic because BWQ needs to be determined to track the use of assimilative capacity by nonsignificant degradation. “Nonsignificant” degradation needs to be tracked so that it is clear when over 10% of the assimilative capacity has been cumulatively utilized in the water body and a Tier 2 review is needed for the next activity. EPA also recommends replacing “For an expanding discharge” with “For an expanding authorization, that was last authorized prior to [month, year]” so that it is clear that this is only accounting for expansions of discharges that were approved prior to the establishment of these AIMS.*

Existing Activity: NPDES permits, state permits, any activity having a CWA § 401 certification, or any activity that threatens the most sensitive use or results in significant degradation, at the time the baseline water quality is determined.

EPA comment: *Please clarify how the state plans to determine if an activity results in significant degradation if the BWQ hasn’t been determined yet. Does the state only intend this reference to significant degradation to be defined in terms of baseline water quality, or defined more broadly? Is this phrase meant to be synonymous with the definition of “significant lowering of water quality”? If so, please clarify that in the definition for “significant lowering of water quality”, if not, please include a definition of “significant degradation”.*

Existing Use Protection (EUP): All parameters of all waters are designated for all uses as per Rule 2.302 unless the use has been removed following APC&EC Rule 2.306.

EPA comment: *This definition does not define what existing use protection is but rather refers to Rule 2.302 that describes designated uses that may apply to specific waters and Rule 2.306 that describes the procedures for removing those uses. The definition should be revised to include the following: Maintenance and protection of existing instream water uses and the level of water quality necessary to protect existing uses.*

High Quality Protection (HQP): For the uses listed in CWA 101(a)(2), all parameters of waters that are not defined as Tier 1 or 3 and have water quality that is better than water quality criteria.

EPA comment: *This revised definition does not appear to be functionally different than the prior definition of “High Quality Water (HQW).” This definition should be revised to clarify how the state intends to apply antidegradation protections to CWA Sec. 101(a)(2) uses. The EPA recommends that the ADEQ describe how protection for high quality waters includes a review process for using assimilative capacity. We also recommend including the following into this provision: Protection and maintenance of parameters that have water quality that exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. Any significant lowering of water quality for these parameters requires the completion of a Tier 2 review prior to authorization.*

Parameter-by-Parameter Basis: The review of the pollutants in a waterbody by assessing the level of each pollutant of concern, as opposed to assessing the overall condition of a waterbody, for the purpose of determining the level of antidegradation review applicable to the waterbody.

EPA comment: *Strongly recommend that the ADEQ expand this definition to add: “When an activity is proposed, the state determines which parameters represent water quality that is better than the applicable criteria developed to protect the CWA section 101(a)(2) uses. The water body is then considered high quality for those parameters. Using this method, a water body can be tier 2 for some parameters and tier 1 for others. Determinations of protection are made at the time of the antidegradation review.”*

Water Quality Criteria (WQC): Chemical, physical, and biological elements of Water Quality Standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use.

Proposed EPA comment: *The EPA recommends replacing this definition with the definition of water quality criteria from federal regulation: “Criteria are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.”*

Waterbody-by-Waterbody Approach: The review of the pollutants in a waterbody by assessing the overall or combined levels of the pollutant of concern as opposed to assessing the level of each pollutant of concern in a waterbody for the purpose of determining the level of protection applicable to the waterbody.

EPA comment: *This approach should/can consider more than just the pollutant concentrations. It should be a holistic assessment. The EPA recommends replacing the current definition with this: **Water body-by-Water body Approach:** An approach for determining whether a water body/waterbody segment is high quality based on a judgment of the overall quality of the water body considering a variety of factors. A judgment of quality is made on a weighted assessment of chemical, physical, biological, and other applicable information. Waters can be identified as high quality even if criteria for certain pollutants are not attained or if some designated uses are not fully supported. The presence of a water body on the CWA section 303(d) list for one CWA 101(a)(2) use does not automatically exclude it from potentially being identified as a Tier 2 water. The quality of the water body can either be determined before or at the time of the antidegradation review.*

Waters of the State: All streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state. A.C.A. § 8-4-102 (2017). ~~For the purposes of this Antidegradation Implementation Methodology, waters of the state include those waters meeting the federal definition of Waters of the United States (WOTUS) for Clean Water Act purposes.~~

EPA comment: *Strongly recommend that the reference the last sentence in this provision be deleted. Federal regulations at 40 CFR 131.12 do not limit the state's obligation to protecting only those waters defined as waters of the U.S. The Arkansas Code Annotated (A.C.A. § 8-4-102 et seq.)) states that "waters of the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state." Given that Arkansas's Water Quality Act provides a more expansive definition of "waters of the state," although federal jurisdiction is limited to waters of the U.S., federal regulations do not prohibit the state from applying WQS to all waters of the state. As this provision is currently written, many waters of the state that may be critical to maintaining biological integrity and preserving water quality throughout the state would be excluded from protections in conflict with 40 CFR 131.12 and the provisions in Rule 2.102, and 2.501 referring to applicability to all waters at all times.*

INTRODUCTION

No comments are necessary for this section.

TIER PROTECTION LEVELS

An Antidegradation Policy provides a means for maintaining and protecting surface water quality by requiring all activities with the potential to affect water quality to undergo review and 153 a comment period prior to any decision to approve or deny the activity. In compliance with 40 CFR § 131.12, implementation procedures for Arkansas's Policy identify levels of antidegradation protection (tiers), determination of baseline water quality (BWQ), assessing and determining extent of acceptable lowering of water quality in a high quality water, and identification of less-degrading or non-degrading alternatives. A waterbody's tier identification may be completed using a parameter-by-parameter or waterbody-by-waterbody approach. Arkansas is implementing a hybrid approach in that Tier 1 and Tier 2 protection will be identified on a parameter-by-parameter basis and Tier 3 protection will be identified on a waterbody-by-waterbody basis (Figure 1).

Tier 1: Existing Use Protection (EUP) the basic protection afforded to all parameters of all waterbodies regardless of current water quality, which is that existing uses will be maintained and protected. ~~EUP applies to those waters meeting the definition of WOTUS as defined for purposes of the federal Clean Water Act.~~

EPA comment: *The effect of the revised Existing Use Protection (EUP) provision appears to limit minimum existing use (Tier 1) protection to only waters of the U.S. as they are defined under current federal regulations. As noted in previous comments, by specifying that existing use protections only apply to waters of the U.S. this provision excludes protections to all other waters of the state. Arkansas Code Annotated (A.C.A. § 8–4–102 et seq.) states that "waters of the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.. Federal regulations at 40 CFR 131.12 do not limit the state's obligation to protecting only those waters defined as waters of the U.S., and given that the state's Water Quality Act provides a more expansive definition of "waters of the state," EPA recommends deleting the second sentence limiting application of Tier 1 protections to only waters of the U.S., to the exclusion of other waters of the state.*

Tier 2: High Quality Protection (HQP) applies to WOTUS for protection of baseline water quality which is better than the water quality criteria. An activity that proposes significant lowering of water quality would require a demonstration that the lowering of water quality is necessary and Tier 1 protection is ensured. Tier 2 is the default protection for all parameters of all waters, with the exception those parameters or waters that have already been determined to be Tier 1 or Tier 3.

EPA comment: *An activity that proposes significant lowering of water quality would require more than a demonstration that the lowering of water quality is necessary, and that Tier 1 protection is ensured. There are additional steps, including a socio-economic demonstration, assurances of proper pollution control measures, and stakeholder participation. EPA*

recommends revising this definition, as indicated in the track changes above, to clarify that the steps for the demonstration are detailed later in this document.

As noted in our comment on EUP, the intent of the revisions to the High-Quality Protection provision appears to be to limit Tier 2 protection to only waters of the U.S. as defined under current federal regulation. As noted in those comments, by specifying protections for Tier 2/high-quality waters defined as waters of the U.S., this provision excludes protections to all other waters of the state (See ACA §8–4–102 et seq.). Although federal jurisdiction is limited to waters of the U.S., federal regulations do not prohibit the state from applying WQS to all waters of the state. As currently written, many waters of the state, such as wetlands and others that may be critical to maintaining biological integrity and preserving water quality throughout the state would be excluded from protections in conflict with the provisions in Rule 2.102, and 2.501 referring to applicability to all waters at all times. At a minimum, the EPA recommends replacing the reference in the first sentence limiting application of Tier 2 protections to only waters of the U.S., with the phrase “waters of the state.”

Tier 3: Outstanding Resource Waters (ORW) applies to waterbodies listed as an Outstanding Resource Water (ERW, ESW, and NSW) in APC&EC Rule 2. Tier 3 review is required for those waters encompassed by APC&EC Rule 2.203 and 40 CFR § 131.12(a)(3).

TIER PROTECTION LEVELS AND ANTIDegradation EVALUATION

A) Tier 1- Existing Use Protection (EUP) Evaluation

~~Review of Tier 1 review of waters of the state (ACA §8–4–102 et seq.) will be for performed for all parameters of those parameters all WOTUS of WOTUS that are not attaining water quality criteria, including those in . It will also include certain canals/ditches, storm water control structures, and structures purposefully created for effluent conveyance with an existing use attained on or after November 28, 1975, whether or not they are included in the water quality standards. For Tier 1 protection waters, the Antidegradation Policy is implemented through the state’s NPDES Permit Issuance Process, including applicable major modifications (See Section 5). New or expanding activities are not allowed to discharge pollutants that may cause or contribute to impairment of a designated or existing use, violation of water quality criteria, or increase pollutant loading to a § 303(d) listed water.~~

Tier 1 review allows activities to occur according to applicable water quality standards without social and economic analyses. Other statutory, regulatory, or policy (CPP) requirements for the development of appropriate effluent limits and other permit requirements are still applicable.

EPA comment: *Per our prior comments, the intent of the revised Existing Use Protection provision here appears to limit minimum existing use (Tier 1) protection to only waters of the U.S. as defined in current federal regulation. By specifying that existing use protections only apply to waters of the U.S., this provision excludes protections to all other waters of the state*

(See ACA §8–4–101 et seq.). The EPA recommends that the ADEQ specify that the review of Tier 1 waters and reference the definition of waters of the state.

The EPA also recommends the revisions included in track changes above, including deleting the phrase “that are not attaining water quality criteria.” Tier 1 review is performed for all parameters, since it is a part of the Tier 2 review as well. For all WOTUS the state needs to assure that existing uses are protected.

B) Tier 2- High Quality Protection (HQP) Evaluation

~~Review of A~~ Tier 2 review waters will be performed for all parameters that are attaining water quality criteria in all waters of the state other WOTUS. By definition, at the high quality waters protection level, where the baseline water quality (BWQ) is better than the minimum water quality criteria for one or more water quality parameters. In an evaluation of Tier 2 waters attain water quality criteria for a pollutant of concern. A where a significant increase (> 10% of total assimilative capacity) in cumulative pollutant loading is being evaluated, which includes all existing discharges and activities, are shall required to be considered as part of a demonstration that the lowering of water quality is necessary justified to accommodate important economic or social development in the area in which the waters are located. The demonstration shall include the following items:

EPA comment: As noted in our comments on the revised Existing Use Protection provision, this provision also appears to limit (Tier 2) protection to only waters of the U.S. as defined under current guidance. Again, we recommend that this provision specify that Tier 2 protections extend to all other waters of the state (See ACA §8–4–102 et seq.). As noted previously, this provision would allow many waters of the state, such as wetlands and others that may be critical to maintaining biological integrity and preserving water quality throughout the state to be excluded from protections in conflict with the provisions in Rule 2.102, and 2.501 referring to applicability to all waters at all times.

The EPA recommends a number of revisions to the proposed language, included in track changes above. Those recommended changes include deleting the phrase “which includes all existing discharges and activities.” It is unclear whether this refers to the baseline water quality or to the cumulative pollutant loading. EPA recommends deleting this phrase to avoid confusion as “cumulative pollutant loading” captures the idea of a cumulative cap and the requirements for determining BWQ are specified elsewhere. If the ADEQ would like to retain this phrase, it would require clarifying whether this phrasing is referring to the concept of baseline water quality or cumulative pollutant loading.

The EPA also recommends replacing the term “justified” with the term “necessary” because it implies the need to complete an alternatives analysis and also indicates that there are no other practicable options to the lowering of water quality, consistent with 40 CFR 131.12. The use of the word “justifies” does not imply the necessity to lower water quality, and therefore the use of this term here could potentially be interpreted to be inconsistent with 40 CFR 131.12. In addition,

40 CFR 131.12(b) states, “The State shall develop methods for implementing the antidegradation policy that are, at a minimum, consistent with the State’s policy and with paragraph (a) of this section”. The state’s antidegradation policy includes the following language: “that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located”. EPA recommends using this language to ensure consistency with the state’s policy as required by 40 CFR 131.12(b).

- 1) Lowering water quality is necessary~~justifiable~~ to accommodate important economic or social development in the area where the water is located;
- 2) The highest statutory and regulatory requirements for all new and existing point sources are achieved;
- 3) All cost-effective and reasonable best management practices (BMPs) for nonpoint source control are considered. See Section 9 for additional discussion; and
- 4) Tier 1 protection is ensured.

EPA comment: *Reiterates the prior recommendation that in 1), the word “necessary” be used because it implies the need to complete an alternatives analysis and also indicates that there are no other practicable options to the lowering of water quality, consistent with 40 CFR 131.12. The use of the word “justifies” does not imply the necessity to lower water quality, and therefore the use of this term here could potentially be interpreted to be inconsistent with 40 CFR 131.12. In addition, 40 CFR 131.12(b) states, “The State shall develop methods for implementing the antidegradation policy that are, at a minimum, consistent with the State’s policy and with paragraph (a) of this section”. The state’s antidegradation policy includes the following language: “that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located”. EPA recommends using this language to ensure consistency with the state’s policy as required by 40 CFR 131.12(b). In addition, for 2), EPA recommends including a section that describes how this will be done in Section 8 or creating its own section right after section 8, since this is part of the Tier 2 review.*

Decisions regarding significant lowering of water quality of Tier 2 protection levels will only be made after steps 1-4 are completed and after the intergovernmental coordination and public participation provisions have been satisfied.

EPA comment: *Recommend that language referencing public participation provisions specifically reference either 40 CFR 25 or Arkansas’s Continuing Planning Process document (2000) which itself references Part 25.*

B) Tier 3 Outstanding Resource Waters (ORW) Evaluation

ORWs are in APC&EC Rule No. 2 for their outstanding natural or cultural resource value. ORW waters are designated as ERW, ESW, or NSW (APC&EC 2015, Appendix A, D). An ORW is Tier 3, regardless of baseline water quality for each parameter. A Tier 3 waterbody’s assimilative capacity is to be maintained in order to protect their outstanding natural or cultural value existing uses. Proposed new or expanding activities may proceed, but with no net increase of parameter load. Activities that result in temporary lowering of water quality are eligible for review.

ORWs are in APC&EC Rule 2 for their outstanding natural or cultural resource value. ORW waters are designated as ERW, ESW, or NSW (APC&EC 2015, Appendix A, D). An ORW is Tier 3, regardless of baseline water quality for each parameter. A Tier 3 waterbody's assimilative capacity is to be maintained in order to protect existing uses including recreational or ecological significance. ~~Proposed new or expanding Activities that result in temporary and short-term lowering of water quality with a duration no longer than XX and must be~~ are eligible for reviewed prior to state action.

EPA comment: *The premise that an ORW is a Tier 3 water may be based on exceptional recreational and ecological significance is consistent with 40 CFR 131.12(a)(3). However, the federal regulation also requires that "water quality shall be maintained." Thus, new or expanded discharges to ORW/Tier 3 waters are prohibited except as described in the preamble to the regulation, which allows that "States may allow some limited activities which result in temporary and short-term changes in water quality." The only exception to this prohibition as discussed in the preamble to the standards regulation (48 F.R. 51402), allows some limited activities that result in temporary and short-term changes in the water quality of ONRW. Such activities must not permanently degrade water quality or result in water quality lower than that necessary to protect the existing uses in the ONRW. The EPA has acknowledged that it is difficult to give an exact definition of "temporary" and "short-term" because of the variety of activities that might be considered. However, in broad terms, the EPA's view of temporary is weeks and months, not years.*

The provision here indicates that permanent new or expanding discharges are allowable, with the limitation that there be no net increase of load for any parameter. The scenario that a new/expanded discharge will not affect assimilative capacity and thus would be allowable in a Tier 3 water is unlikely and moreover, not "temporary" and "short-term." Further, Tier 3 designation also offers special protection for waters that are important for recreation, unique, or sensitive ecologically, but whose water quality, as measured by the traditional parameters may not be particularly high or whose characteristics cannot be adequately described by these parameters (such as wetlands). The EPA recommends that this provision be revised to make it clear that the intent is to limit water quality degradation to the shortest possible time. Although the last sentence indicates that temporary discharges are eligible for review, the provision should make it clear that such activities should not impact existing uses or alter the essential character or special use that lead to the adoption of the ORW/Tier 3 designated use.

ASSIGNING TIER PROTECTION

C) Tier 1 Protection

D) Tier 2 Protection

Tier 2 protection is assigned on a parameter-by-parameter basis. A Tier 2 review applies to all proposed discharges to ~~WOTUS~~ waters of the State, unless one of the following conditions applies:

- The water is an ORW to which Tier 3 protection applies,
- The discharge is considered insignificant in accordance with the criteria explained in Section 8.B.4 of this document, or

- The receiving water is listed as impaired for a POC on the Arkansas 303(d) List, which requires a Tier 1 review for that POC.

EPA comment: *As noted in previous comments regarding the revised Existing Use Protection provision, this provision also appears to limit (Tier 2) protection to only waters of the U.S. as defined under current regulation. Again, we recommend that this provision specify that Tier 2 protections extend to all waters of the state (See ACA §8–4–102 et seq.). Although federal jurisdiction is limited to waters of the U.S., as noted previously, this provision would allow many waters of the state, such as wetlands and others that may be critical to maintaining biological integrity and preserving water quality throughout the state to be excluded from protections in conflict with the provisions in Rule 2.102, and 2.501 referring to the purpose and applicability water quality standards to all waters at all times.*

E) Tier 3 Protection

Tier 3 protection is assigned on a waterbody-by-waterbody basis to all waters designated as ORWs in APC&EC Rule No. 2. Any degradation of water quality is prohibited in these waters unless the discharge only results in temporary and short-term degradation of water quality with a duration of no longer than {insert duration} and must be reviewed prior to state action.

EPA comment: *Under federal regulation, any water can be assigned ONRW status regardless of water quality, since factors such as ecological or recreational significance are characteristics that the state may wish to protect. EPA recommends the edits above to define the limits of temporary and short-term degradation that may be allowed by the state.*

REVISING TIER PROTECTION LEVELS

The tier protection for a water may change if it is added to or removed from the list of ORWs in APC&EC Rule No. 2. The tier of protection for a pollutant may change if an impairment for that pollutant is added to or removed from the Arkansas 303(d) List.

EPA comment: *Strongly recommend removing or revising this provision because it appears to allow the level of protection afforded to ORWs/Tier 3 waters to be changed based on an impairment from a pollutant. This appears to be inconsistent with Rule 2.106 which defines designated use as specified in in the water quality standards whether or not that use is being attained, and inconsistent with Rule 2.203 which specifies that the “water quality for which the outstanding waterbody was designated shall be protected.” Further, Rule 2.302 specifies that the ORW designated use is a designated use, not simply a descriptive designation. Given this, there is a reasonable expectation that waters that the Commission adopt the ORW designated use based on exceptional water quality, important recreational, unique or sensitive ecological characteristics of those waters and represent an existing use that cannot be removed per 40 CFR 131.10(h)(1).*

The preamble to the water quality standards regulation (48 F.R. 51402) allows some limited activities that result in temporary and short-term changes in the water quality of an ORW/Tier 3